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May 20, 2016

VIA E-MAIL AND U.S. MAIL

Richard T. Drury
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410 12th Street, Suite 250
Oakland, CA 94607

Re: Mammoth Pacific, L.P., Ormat Nevada, Inc. and Ormat Technologies, Inc.'s Response to March 22, 2016 Notice of Intent to Sue Letter and Plaintiffs' Proposed First Amended Complaint

Dear Richard and Doug:

1. Introduction

As you know, Holland & Hart LLP represents Mammoth Pacific, L.P., Ormat Nevada, Inc. and Ormat Technologies, Inc. (collectively, "Ormat") in the case of *Global Community Monitor, et al. v. Mammoth Pacific, L.P., et al.*, E.D. of California Case No. 14-cv-01612-MCE-KJN (the "Lawsuit"). This letter responds to your March 22, 2016 letter providing Notice of Intent to Sue Under the Clean Air Act ("March 22 NOI Letter"). It also responds to Plaintiffs' proposed First Amended Complaint ("FAC"), a copy of which was provided to me by Mr. Chermak on Thursday, May 12, 2016.

Ormat's response to the both the March 22 NOI Letter and the FAC is grounded on the current posture of the Lawsuit, including the Court's decisions on Ormat's two motions to dismiss, the discovery undertaken in the Lawsuit to date, the opening expert reports filed on behalf of both your clients and Ormat on May 6, 2016, as well as the schedule for submission of the remaining expert reports, expert discovery and the parties' agreed schedule for dispositive motions.

2. The Procedural Posture of the Lawsuit and the Agreed Schedule for Expert Discovery and Dispositive Motions

Following initiation of the Lawsuit by your filing of the Complaint on July 8, 2014, Ormat filed the first of two sets of motions to dismiss on September 8, 2014. In its May 5, 2015 Memorandum Decision and Order (Dkt. No. 27) on Ormat's first set of motions to dismiss ("May 5, 2015 Order"), the Court granted Ormat's motion to dismiss under Fed. R. Civ. Pro. 12(b)(6) in part. A copy of the Court's May 5, 2015 Order is attached to this letter for reference as Exhibit A.

Following issuance of the May 5, 2015 Order, Plaintiffs' sole remaining cause of action in the Lawsuit is their Eighth Cause of Action, which alleges that Ormat's operation of its facilities located in Mono County, California violates Great Basin Unified Air Pollution Control District (the "District") Rule 209-A and Rule 209-B. Apart from that claim, all other causes of action have been dismissed by the Court.

In its May 5, 2015 Order, the Court granted Plaintiffs leave to file an amended complaint if they chose to do so, but required that any amended complaint be filed "[n]ot later than twenty (20) days following the date this Memorandum and Order is electronically filed." Exhibit A at 21:22-23. Plaintiffs chose not to file an amended complaint within the deadline set by the Court.

The Court entered a Pretrial Scheduling Order on August 11, 2015 (Dkt. No. 31). A copy of the Pretrial Scheduling Order is attached as Exhibit B. Under the Pretrial Scheduling Order, "[n]o joinder of parties or amendments to pleadings is permitted without leave of court, good cause being shown." Exhibit B at 1:24-25. Per the Pretrial Scheduling Order, fact discovery in the Lawsuit closed on March 7, 2016. Exhibit B at 2:2-3. Disclosure of experts and opening expert reports were due on May 6, 2016. Exhibit B at 2:9-12. Both Plaintiffs and Ormat met that deadline.

Per agreement of the parties, rebuttal expert reports are due on May 27, 2016. Expert depositions have been scheduled by agreement for the second and third weeks of June, with those depositions concluding on June 25, 2016. The Pretrial Scheduling Order establishes a dispositive motion cutoff of September 15, 2016. Exhibit B at 4:1-10. Through an exchange of emails between Mr. Chermak and me between April 18 and April 26, 2016, the parties developed the following agreed schedule for dispositive motions:

July 8, 2016:	Parties file their respective motions for summary judgment;
August 4, 2016:	Opposition briefs due and any cross-motions due;
August 18, 2016:	Reply briefs and oppositions to cross-motions due;
September 1, 2016:	Reply briefs on cross-motions (if any) due;
September 8, 2016:	Last day to note dispositive motions for hearing.

3. Plaintiffs' Request that Ormat Stipulate to their Filing of the FAC

While Plaintiffs initially state in the March 22 NOI Letter that "[t]he Noticing Parties intend to bring suit under the Act," the Letter goes on to say that, based on the fact that the Lawsuit is still pending, Plaintiffs intend to "amend their complaint to include the cause of action stated below." March 22 NOI Letter at 2. This fact was confirmed by Mr. Chermak during a phone conversation I had with him on April 18, 2016 regarding the March 22 NOI Letter. In an email confirming the substance of that conversation, I stated:

During our call, you represented that your March 22, 2016 Notice of Intent letter was not sent as a precursor to the initiation of a new lawsuit, but was instead sent in order to satisfy the procedural prerequisites to filing an Amended Complaint in the existing case. You further represented that the only modification to the existing complaint being contemplated was a clarification of Plaintiffs' remaining cause of action (COA No. 8) to include a claim that the permits issued to Ormat by the GBUAPCD should have included a requirement to install BACT, based on an allegation that the emissions allowed under those permits exceeded 250 pounds per day. Finally, you stated that the proposed amendment would not require a reopening of discovery, but could be pursued based on the existing factual record. Based on these representations, you requested that Ormat consider stipulating to allowing Plaintiffs to file an Amended Complaint, the stipulation to be lodged with the Court as soon as the 60-day deadline under the Notice of Intent letter had expired (May 22, 2016).

April 18, 2016 Email from Steven G. Jones to Doug Chermak (copy attached for reference as Exhibit C). On May 12, 2016, Mr. Chermak transmitted Plaintiffs' proposed FAC for Ormat's review. A copy of the FAC is attached as Exhibit D.

4. Factual Allegations Made in the March 22 NOI Letter

To provide a context for Ormat's response to the March 22 NOI Letter, I have outlined the factual contentions made in that Letter.

4.1 The District Fails to Meet California State Ozone Standards

The March 22 NOI letter begins by asserting that Plaintiffs Russell Covington and Randal Sipes are entitled to assert claims under 42 U.S.C. § 7604(a)(3) in the event that Ormat has either constructed or is operating a stationary source of air pollutants without permits required under either parts C (Prevention of Significant Deterioration) or D (Plan Requirements for Nonattainment Areas) of subchapter I of the Federal Clean Air Act (the "Act"). March 22 NOI letter at 1.

Plaintiffs assert that "three existing geothermal plants" owned and operated by Ormat "emit volatile organic compounds ('VOCs') in the form of fugitive motive fluid emissions of either n-pentane or isobutene"[1] and that these VOCs combine with nitrogen oxides to form ozone, i.e., that the VOCs are a precursor to ozone, which is a criteria air pollutant under the Act. *Id.* at 3, 5, 6. The three geothermal plants referred to in the March 22 NOI Letter are Mammoth Pacific I

[1] In Randy Peterson's 30(b)(6) deposition given on behalf of Ormat, Mr. Peterson testified that the motive fluid for MP-I was n-butane, while MP-II and PLES-I use isobutane, which is a different substance than isobutene. *See* 30(b)(6) Deposition at 22:24-23:16; corrections to 23:9-16 (transmitted on February 1, 2016).

Geothermal Facility East and Mammoth Pacific I Geothermal Facility West (referred to collectively as "MP-I"), Mammoth Pacific II Geothermal Facility ("MP-II") and Pacific Lighting Energy Systems Unit Geothermal Development Project ("PLES-I"). *Id.* at 3.

The provisions of the Act which Plaintiffs rely on hinge on an area's compliance with the *federal* National Ambient Air Quality Standards ("NAAQS"). While Plaintiffs claim that the District "fails to meet state ozone standards," *id.* at 4, there is no claim in the March 22 NOI letter that the District is in nonattainment for federal ozone standards, implicitly conceding that Plaintiffs can make no such allegation. In fact, Plaintiffs' expert James Lents explicitly acknowledged that the District is in attainment for ozone. *See* Expert Report of Lents (May 6, 2016) at 11 ("The region where the Mammoth Geothermal Complex is located is presently classified as 'unclassified/attainment' for ozone.") (Citing 77 Fed. Reg. 30088 (May 21, 2012)).

4.2 Ormat's Facilities Were Permitted Without Requirements to Implement BACT or Obtain Emissions Offsets

Plaintiffs correctly note that the District permitted each of Ormat's Mammoth Lakes facilities without requiring that those facilities implement BACT or that Ormat obtain emissions offsets in order to operate those facilities. March 22 NOI Letter at 4-5. The District issued ATCs and PTOs for MP-I West and MP-I East in 1987 and 1988, allowing construction and operation of the MP-I facility.[2] *Id.* at 4. The District issued ATCs and a PTO in 1988 and 1991, respectively, allowing operation of the MP-II facility.[3] *Id.* ATCs and a PTO for PLES-I were issued in 1989 and 1991, respectively.[4] *Id.* at 5. While all of these permits contained a limitation on fugitive emissions of 250 lbs/day, none of those permits required installation of BACT or the acquisition of emissions offsets.

On February 8, 2010, the District issued PTO Nos. 583-03-09 and 575-03-09, which approved a combined emissions limit for MP-II and PLES-I of 500 lbs/day of VOCs.[5] *Id.* at 5. PTO Nos. 601-03-09 (February 8, 2010)[6] and 602-03-09 (February 8, 2010)[7] approved a combined

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[2] ATC No. 325 (December 11, 1987) and PTO No. 325 (May 16, 1988) allowed for construction and operation of MP-I West; ATC No. 328 (December 11, 1987) and PTO No. 328 (May 16, 1988) allowed for construction and operation of MP-I East. Copies of the PTO No. 325 and PTO No. 328 were attached to the First Declaration of Steven G. Jones (Dkt. No. 15) as Exs. 1 and 2, respectively.

[3] ATC Nos. 329 and 583 were issued on July 26, 1988. The March 22 NOI letter states that PTO 583 was issued "in or around 1991." March 22 NOI Letter at 4. The precise date of PTO 583 was June 28, 1991. *See* First Jones Decl., Ex. 3 (copy of PTO 583).

[4] ATC Nos. 279 and 575 were issued on June 30, 1989. *See* First Jones Decl., Ex. 17. PTO 575 was issued on June 28, 1991. *See* First Jones Decl., Ex. 4.

[5] These PTOs are attached as Exs. 12 and 13 to the First Jones Decl., respectively.

[6] First Jones Decl., Ex. 7.

[7] First Jones Decl., Ex. 6.

emissions limit of 500 lbs/day of VOCs for MP-I East and MP-I West. None of those PTOs required the installation of BACT or the acquisition of offsets. *Compare* March 22 NOI Letter at 4, 5.

5. Legal Claims Made in the March 22 NOI Letter

Plaintiffs allege in the first paragraph of their March 22 NOI Letter that a citizen suit may be brought against any person who proposes to construct or constructs a new or modified stationary source without a permit required under part C and part D of the subchapter 1 of the Act – which apply to the permitting of major sources in attainment and nonattainment areas. However, as noted by the Court in its May 5, 2015 Order, Ormat's facilities are not major sources but "fall under the minor source program." Exhibit A at 16:11. As MP-I, MP-II and PLES-I are not major sources, Plaintiffs may only bring claims for violation of District Rule 209, and not for any violation of federal major source permitting standards.

Because the Court has previously dismissed all of Plaintiffs' claims with the exception of claims asserted under Rule 209, Ormat has limited its focus to the claims under Rule 209 articulated in the March 22 NOI Letter. In that Letter, Plaintiffs claim that Rule 209-A

> prohibits the issuance of an authority to construct ("ATC") for any new stationary source or modification which results in emissions of 250 or more pounds per day of any pollutant for which there is a national ambient air quality standards [sic], or any precursor of any such pollutant, unless the facility complies with all provisions of Rule 209-A, including but not limited to implementing best available control technology ("BACT") and requiring emissions offsets . . . .

March 22 NOI Letter at 6.

As elaborated more fully below, this statement misrepresents the terms of District Rule 209-A(D), which states that the BACT and offset requirements outlined in subsection D must be met by "all new stationary sources or modifications *subject to this section*." Rule 209-A(D)(1) (emphasis supplied). In order to determine whether a source or modification is "subject to" Rule 209-A(D), it is necessary to look to Rule 209-A(B), which states that the BACT and offset requirements of "[s]ection (D) of this rule shall apply to new stationary sources and modifications which result in . . . (a) A *net increase in emissions of 250 or more pounds* during any day of any pollutant for which there is a national ambient air quality standard (excluding carbon monoxide and particulate matter), or any precursor of such a pollutant." Rule 209-A(B)(2)(a) (emphasis supplied).

Plaintiffs in fact acknowledge that Rule 209-A(B) triggers the BACT and offset requirements of defined in subsection (D) for "'all new stationary sources or modifications' which results in 'a net increase in emissions of ***250 or more pounds*** during any day' of VOCs." March 22 NOI

Letter at 7 (italics and bold text in original). However, after accurately quoting the language of Rule 209-A(B), Plaintiffs subsequently claim that "[u]nder GBUAPCD Rule 209-A, a permit for a new or modified source must be denied if it results in *an increase in emissions* of, inter alia, VOCs of 250 or more lbs/day unless BACT and emissions offsets are employed at the source." March 22 NOI Letter at 8 (emphasis supplied). This misstates the terms of Rule 209-A(B).

While acknowledging that Rule 209-A(B) requires a net increase in emissions of 250 or more pounds per day before Rule 209-A(D) is triggered, the March 22 NOI Letter fails to show how a net increase in emissions has occurred. Instead, the Letter asserts that combining two, separate 250 lb/day limits into a single 500 lb/day limit somehow results in the "net increase in emissions of 250 or more pounds during any day of VOCs." March 22 NOI Letter at 7, 8. As outlined below, neither the original ATCs nor any of the subsequent PTOs issued by the District have resulted in a "net increase in emissions of 250 or more pounds" of any pollutant or precursor to any pollutant for which a NAAQS exists. Consequently, the BACT and offset requirements of Rule 209-A(D) are not applicable to any of the ATCs or PTOs[8] issued by the District for Ormat's facilities.

6. Ormat's Response to the March 22 NOI Letter

The claims outlined in the March 22 NOI letter are both factually deficient and legally defective. The procedural defects in the proposed FAC are outlined in Section 7. Completely apart from those procedural issues, Ormat rejects Plaintiffs' claims on the merits for the following reasons:

6.1 The Court Has Found that 2009-2010 Permits Were Not "Modifications" and that the 2013 Modifications Will Not Support a Claim Under Rule 209

6.1.1 The 2009 and 2010 Permits Were Not "Modifications" for Purposes of Rule 209-A(B)

Plaintiffs' March 22 NOI Letter references the following permits:

- the initial ATCs and PTOs for MP-I;[9]
- the initial ATCs and PTOs for MP-II;[10]

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[8] In addition to claiming that Ormat's permits violate the BACT and offset requirements of Rule 209-A(D), Plaintiffs also assert a derivative claim that Ormat is operating its facilities in violation of Rule 209-B, since PTOs issued pursuant to Rule 209-B can only be based on ATCs properly issued under Rule 209-A. *See* March 22 NOI Letter at 8. Because any violation of Rule 209-B is derivative of a violation of Rule 209-A, Ormat has limited its response to claims under Rule 209-A, since, if ATCs issued under Rule 209-A are valid, then PTOs which rely on those ATCs would likewise be valid.

[9] ATC Nos. 325 and 328 (December 11, 1987) and PTO Nos. 325 and 328 (May 16, 1988), cited in Plaintiffs' March 22 NOI Letter at 4.

- the initial ATCs and PTOs for PLES-I;[11]
- the 2009 PTO for MP-I which allowed for combined emissions limits for MP-I West and MP-I East;[12]
- the 2010 PTOs for MP-I that "changed the names of the facilities,"[13]
- the 2010 PTOs allowing for combined emissions limits for MP-II and PLES-I;[14] and,
- the 2013 ATCs which "authorized facility equipment replacements to upgrade turbines and condensers, and approved a change in motive fluid."[15]

In its May 5, 2015 Order, the Court found that the 2009 and 2010 permits that established a combined emissions limit between MP-I East and MP-I West and a combined emission limit between MP-II and PLES-I did not meet the definition of "modifications" under Rule 209-A-(F)(2):

> Additionally, Plaintiffs have not alleged facts sufficient to show that the "combining" of the facilities was a modification under Rule 209. Modification is defined as "any physical change in, change in method of operation of, or addition to an existing stationary source, except that routine maintenance or repair shall not be considered to be a physical change." Rule 209-A(F)(2). A change in how the plants are described in the renewed PTO permits does not appear to be a change in the plants themselves or in the method of operation.

Exhibit A at 19:9-15. Because the 2009 and 2010 permits did not authorize a "modification" as defined in Rule 209-A, those permits cannot support an allegation that Ormat violated either Rule 209-A or Rule 209-B.

6.1.2 The Court Has Found that the 2013 Modifications Resulting in Decreased Emissions Will Not Support a Claim Under Rule 209

The Court also found in its May 5, 2015 Order that the 2013 modifications, "which involved an upgrade to MP-I's facility turbines and condensers and approved a change in motive fluid *in*

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[10] ATC Nos. 329 and 583 (July 26, 1988), cited in Plaintiffs' March 22 NOI Letter at 4 and PTO No. 583 (June 28, 1991), cited in Plaintiffs' March 22 NOI Letter at 4.

[11] ATC Nos. 279 and 575 (June 30, 1989), cited in Plaintiffs' March 22 NOI Letter at 5, and PTO 575 (June 28, 1991), cited in Plaintiffs' March 22 NOI Letter at 5.

[12] PTO 601 (June 24, 2009), cited in Plaintiffs' March 22 NOI Letter at 4.

[13] PTO Nos. 602-03-09 and 601-03-09 (February 8, 2010), cited in Plaintiffs' March 22 NOI Letter at 4.

[14] PTO Nos. 583-03-09 and 575-03-09 (February 8, 2010), cited in Plaintiffs' March 22 NOI Letter at 5.

[15] ATC Nos. 601-04-13 and 602-04-73 (May 1, 2013), cited in Plaintiffs' March 22 NOI Letter at 4.

order to decrease emissions, does not trigger the BACT and offset requirements of Rule 209." Exhibit A at 17 n. 10 (emphasis supplied). The Court grounded this finding on the fact that Plaintiffs had conceded this position by failing to oppose Ormat's argument that a modification under which "emissions would actually *decrease*" could not result in the "net increase in emissions" required to trigger the BACT and offset requirements of Rule 209-A(D). *Compare* Ormat's Motion to Dismiss under Rule 12(b)(6) (Dkt. No. 17) at 14:6-17 (italics in original document) with Exhibit A at 17 n. 10 (quoted above and citing *Tatum v. Schwartz*, No. 2:06-cv-01440-DFL-EFB, 2007 WL 419463, *3 (E.D. Cal. Feb. 5, 2007) (by failing to address defendants' argument, plaintiff "tacitly concedes this claim," justifying the court in granting the defendants' motion to dismiss).

6.2 Plaintiffs' Sole Remaining Claim is Whether Ormat's Facilities Constitute a Single Stationary Source for Purposes of Rule 209-A(F)(3) and Whether a "Net Emissions Increase" Has Occurred Under Rule 209-A(B)(2)(a)

Plaintiffs have a single remaining claim,[16] namely, whether Ormat's facilities "constitute[] a single stationary source within the meaning of Rule 209, and thus when each facility was permitted Defendants added another 250 pounds per day of emissions to the Complex's overall emissions." Exhibit A at 20:2-4 (characterizing Plaintiffs' argument under their Eighth cause of action). Even though the Court expressed skepticism regarding the validity of this claim, it allowed it to proceed beyond the pleading stage: "While the Court has doubts about Plaintiff's success of recovery, the complaint may proceed on the eighth cause of action." Exhibit A at 21:11-14. Based on the Court's rulings in its May 5, 2015 Order, the existing law of the case precludes Plaintiffs from attempting to extend their claims beyond a contention that MP-I, MP-II and PLES-I constitute a single stationary source of emissions and that the modifications to those facilities in 2013 generated a net emissions increase of more than 250 pounds a day of VOCs.

6.3 Plaintiffs Cannot Show that Combined Emissions Limits Generate a Net Emissions Increase Necessary to Trigger BACT and Offsets Under Rule 209-A(B)(2)(a)

The FAC alleges that permits allowing combined emissions limits for MP-I East and MP-I West and MP-II and PLES-I resulted in a net emissions increase of more than 250 lbs/day of VOCs. FAC at ¶¶ 85-87; 100-102, 116, 120-122 and 128. Plaintiffs claim that, if one plant previously had an emissions limit of 250 lbs/day, a combined emissions limit of 500 lbs/day would allow

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[16] The Court dismissed Plaintiffs Second, Third, Fourth and Fifth causes of action based on a lack of alleged facts showing that a net emissions increase had occurred based on the 2009 modifications, Exhibit A at 18-19, and dismissed Plaintiffs' First cause of action based on the fact that the 2013 modifications did not result in any increase in emissions, let alone a net increase sufficient to trigger the provisions of Rule 209-A(B)(2). *See* Exhibit A at 17 n. 10. Plaintiffs' Sixth and Seventh causes of action were dismissed based on Plaintiffs' concession of claims pertaining to Ormat's proposed M1 replacement project, construction of which has not yet commenced. *See* Exhibit A at 4:18-22.

one plant covered by that combined limit to increase its emissions by as much as 250 additional lbs/day. *See, e.g.,* FAC at ¶ 85 ("the permit for the first time allows either unit to increase its potential to emit from 250 lbs/day to over 500 lbs/day – an increase of 250 lbs/day."); ¶ 100 (same). This contention fails as a matter of fact. Because the 500 lb/day limit was for the combined facilities, the only way one facility could increase emissions would be for the other to reduce its emissions by a concomitant amount. As a result, the overall post-permit limits for MP-I East, MP-I West, MP-II and PLES-I *were the same as they were before the 2009 permits were issued.*

With respect to the 2013 modifications, those modifications actually resulted in a *decrease* in emissions based on the change in motive fluid for MP-I and the installation of vapor recovery technology. Consequently, there was no increase in emissions at all, let alone the net increase of 250 lbs/day required to trigger Rule 209-A(B)(2). In addition, Rule 209-A(B)(4)(f) exempts any modification from the BACT and offset requirements of Rule 209-A(D)(2) if it "consists solely of the installation of air pollution control equipment which, when in operation, will directly control emissions from an existing source." This was precisely the purpose of the change in motive fluid and the installation of emission control technology in 2013.

7. Review of Plaintiffs' Proposed FAC

The remainder of this letter responds to Plaintiffs' request that Ormat stipulate to Plaintiffs' filing of the FAC. For the reasons outlined below, Ormat rejects Plaintiffs' request.

7.1 The FAC Attempts to Revive Causes of Action That Have Already Been Dismissed by the Court

During our phone conversation on April 18, Mr. Chermak stated that the FAC's only modification to Plaintiffs' existing Complaint was a clarification of Plaintiffs' remaining cause of action to include a claim that Ormat's permits should have included a requirement to install BACT, based on an allegation that the emissions allowed under those permits exceeded 250 pounds per day. *See* Email confirming the substance of April 18, 2016 telephone conversation, quoted above at p. 3. Contrary to Mr. Chermak's representation, the actual text of the FAC demonstrates that Plaintiffs are seeking to go far beyond a clarification of their Eighth cause of action. As already noted above, there is no factual basis for Plaintiffs to assert that the permits allowing combined emissions for MP-I East and MP-I West or MP-II and PLES-I support a claim that either BACT or offsets were required under Rule 209-A(B)(2)(a) or Rule 209-A(B)(4)(f).

Much more troubling, however, is Plaintiffs' attempt to reassert their Second, Third, Fourth and Fifth causes of action. This directly contravenes the law of the case as set forth in Judge England's May 5, 2015 Order, in which each of those causes of action was specifically dismissed by the Court. *Compare* FAC at ¶¶ 81-110 with Exhibit A at 19. Plaintiffs have neither requested

reconsideration of the Court's May 2015 Order nor sought interlocutory appeal of that Order. Instead, Mr. Chermak has portrayed the FAC as nothing more than a clarification of Plaintiffs' sole remaining claim. In the event Plaintiffs choose to request leave to file the FAC, we would be obligated to point out Plaintiffs' willful disregard of the Court's May 25, 2015 Order and are confident that the Court would look with disfavor on any attempt to circumvent that Order.

7.2 The FAC is Untimely, Would Impose Prejudice on Ormat and the Claims Plaintiffs Seek to Assert Are Futile

The Court's Pretrial Scheduling Order states that leave of court and a showing of good cause is required for any amendment to the parties' pleadings. *See* Exhibit B at 1:24-25 ("No joinder of parties or amendments to pleadings is permitted without leave of court, good cause being shown."). In its May 5, 2015 Order, the Court granted Plaintiffs leave to amend their complaint, if they desired to do so. However, the Court set a deadline of May 25, 2015 for Plaintiffs to file any amended complaint. Now, more than a year later, Plaintiffs seek to file the FAC without obtaining leave of Court, but instead by means of a stipulation from Ormat. In addition, Plaintiffs are attempting to insert new claims into the case and modify their existing claims months after fact discovery has closed and on the eve of the close of expert discovery.

Per the Court's Pretrial Scheduling Order, fact discovery closed more than ten weeks ago, on March 7, 2016. *See* Exhibit B at 2:2-3. Opening expert reports were filed on May 6 and expert rebuttal reports are due on May 27, 2016. In the event Plaintiffs file a motion for leave to amend, the first available hearing date at which such a motion could be heard is June 30.[17] By that date, all expert reports will have been submitted and all expert depositions concluded.

While Fed. R. Civ. P. 15(a) recommends that leave to amend be "freely given when justice so requires," once a deadline imposed by the Court or the case schedule has passed, a motion to amend is considered under Fed. R. Civ. Pro. 16(b), under which the court "primarily considers the diligence of the party seeking the amendment." *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000). Where a moving party fails to show diligence, "the inquiry should end." *In re W. States Natural Gas Antitrust Litig.*, 715 F.3d 716, 737 (9th Cir. 2013) (quoting *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992)).

After the deadline for amendment has passed, requests to amend are reviewed in light of four factors: (1) bad faith on the part of the plaintiffs; (2) undue delay; (3) prejudice to the opposing party; and (4) futility of the proposed amendment. *Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980, 986 (9th Cir. 1999). "Not all of the factors merit equal weight. As this

[17] The "Standard Information" posted on Judge England's webpage lists the Court's available hearing dates. Available hearing dates in June 2016 are June 2, 16 and 30. Per E.D. of California Local Rule 230(b), a motion for leave to amend may not be noted less than 28 days from the date the motion is filed. Accordingly, even if Plaintiffs file a motion for leave to amend next week, the first available hearing date before Judge England would be June 30, 2016.

circuit and others have held, it is the consideration of prejudice to the opposing party that carries the greatest weight." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

Although delay is not dispositive, it is relevant, particularly where, as here, the facts upon which an amended pleading are based have been known for months and Plaintiffs have offered no reason for the extraordinary delay. *Compare Lockheed Martin*, 194 F.3d at 986 (rejecting request for leave to amend where the moving party had long been aware of the facts on which the amendment was based and offered no excuse for its delay); *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1388 (9th Cir. 1990) ("Relevant to evaluating the delay issue is whether the moving party knew or should have known the facts and theories raised by the amendment in the original pleading.").

Based on Plaintiffs' new assertion of "ongoing violations" of Rule 209-A and 209-B, *see* FAC at ¶¶ 123, 129, as well as the reassertion of claims previously dismissed before the close of discovery, discovery will need to be reopened, contrary to the representations made by Mr. Chermak on April 18. Amendments which require that discovery be reopened are assumed to be prejudicial to the nonmoving party. *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002) (affirming denial of motion for leave to amend filed five days before the close of discovery where the additional claims would have required additional discovery, delaying proceedings and prejudicing defendants); *AmerisourceBergen Corp. v. Dialysist W., Inc.*, 465 F.3d 946, 957 (9th Cir. 2006) (Tashima, J., dissenting) (noting that the Ninth Circuit has "often affirmed the denial of leave to amend … when discovery had closed or was about to close."). "A need to reopen discovery and therefore delay the proceedings supports a district court's finding of prejudice from a delayed motion to amend the complaint." *Coleman*, 232 F.3d at 1294 (quoting *Lockheed Martin*, 194 F.3d at 986).

Leave to amend should not be given where the proffered amendment is futile. "Where proposed new claims are obviously defective or are 'tenuous' from a legal or factual standpoint, the futility analysis weighs against granting leave to amend." *Ewing v. Megrdle*, C.D. Cal. Case No. CV 12-01334 MWF (AJW), Not Reported in F. Supp.3d, 2015 WL 1519088, * 5 (March 26, 2015) (citing *Lockheed Martin,* 194 F.3d at 986 ("Where the legal basis for a cause of action is tenuous, futility supports the refusal to grant leave to amend."); *Morongo Band of Mission Indians v. Rose,* 893 F.2d 1074, 1079 (9th Cir.1990) (affirming the district court's denial of leave to amend based on the "potential futility" and "tenuous nature" of the proposed new federal claims). Here, not only have most of the claims asserted under the FAC already been dismissed by the Court, but they lack any factual foundation, since Plaintiffs cannot show that either the 2009 changes or the 2013 modifications resulted in a net increase in emissions of more than 250 lbs/day of VOCs. Consequently, assertion of such claims would at best be fruitless and might ultimately justify the imposition of sanctions for Plaintiffs' flouting the prior order of the Court.

7.3 The FAC Improperly Extends the Scope of Plaintiffs' Claims by Asserting Ongoing Violations of Rule 209-A and the Clean Air Act

In addition to requiring a reopening of discovery, the FAC would prejudice Ormat by extending the scope of Plaintiffs' claims by a period of more than two years. As noted above, Plaintiffs' Second, Third, Fourth and Fifth Causes of Action were dismissed by the Court more than a year ago. Exhibit A at 19. Not only have Plaintiffs sought to revive those claims, but they seek to assert "ongoing" violations of Rules 209-A and 209-B. *See* FAC ¶¶ 87, 88, 93, 94, 102, 103, 109, 116, 117, 123 and 129. The assertion of ongoing violations would have the effect of adding an additional 22 months of potential penalties from the date of Plaintiffs' initial Complaint and more than 12 months of potential penalties from the date those claims were previously dismissed, imposing prejudice on Ormat based on no other reason than Plaintiffs' delay in seeking to amend their Complaint.

7.4 The FAC Misstates the Terms of the 2013 Permit Modifications, Contravening the Existing Law of the Case

Finally, the FAC misrepresents both the terms and the effect of the 2013 modifications, alleging that those modifications required the installation of BACT based on allegations that the emissions resulting from those modifications were "double the Rule 209-A threshold." FAC ¶ 9. Ironically, the FAC correctly states that the 2013 modifications "authorized facility equipment replacements to upgrade turbines and condensers, and approved a change in motive fluid." FAC ¶ 67. What Plaintiffs fail to acknowledge is that these changes resulted in a *decrease* in emissions, not the net increase of 250 lbs/day necessary to trigger BACT and require the acquisition of offsets under Rule 209-A(B)(2)(a). In addition, as noted above, because the 2013 modifications decreased emissions, they were exempt from BACT under Rule 209-A(B)(4)(f). These misrepresentations and omissions make any claim grounded on the 2013 modifications untenable and therefore futile.

8. Ormat's Response to Plaintiffs' Request that Ormat Stipulate to Plaintiffs' Filing of the FAC

For the reasons outlined above, Ormat must reject Plaintiffs' request that it stipulate to the filing of the FAC. The FAC attempts to resurrect claims that have previously been dismissed by the Court. The assertion of claims based on ongoing violations, the recharacterization of the 2009 changes as "modifications" under Rule 209-A and the allegation that the 2013 modifications resulted in a net increase in emissions requiring the installation of BACT and the acquisition of offsets will require a reopening of discovery months after fact discovery has closed and just as expert discovery is wrapping up. There has been no effort by Plaintiffs to justify their year-long delay in seeking to amend the initial Complaint past the deadline set by the Court and the fact that there is neither a factual nor legal basis for the amended claims renders them futile.

9. Conclusion

We strongly urge Plaintiffs not to seek leave to file the FAC. In the event a motion for leave to amend is filed, particularly if leave is sought to file the FAC in its current form, we will be forced to point out to the Court that Plaintiffs are attempting to revive claims that have previously been dismissed by the Court without seeking either reconsideration or interlocutory review of the Court's prior order, an effort that contravenes the existing law of the case. In addition, for the reasons outlined above, it is Ormat's position that Plaintiffs' remaining cause of action lacks both a factual and legal basis. While we recognize that the Court has allowed that claim to proceed, we will strenuously resist any attempt to modify or extend that claim at this point in the case.

Very truly yours,

Steven G. Jones

Enclosures

cc: Isaac Angel, CEO, Ormat Technologies, Inc. (w/ enclosures)
Gillon Black, Chairman of the Board, Ormat Technologies, Inc. (w/ enclosures)
Lynn Alster, General Counsel, Ormat Technologies, Inc. (w/ enclosures)
Randy Peterson, Director, Project Development, Ormat Nevada, Inc. (w/ enclosures)
John Bernardy, Plant Manager, Ormat Mammoth Lakes Facilities (w/ enclosures)
Gina McCarthy, Administrator, USEPA (w/ enclosures)
Jared Blumenfeld, Regional Administrator, EPA Region 9 (w/ enclosures)
Mary D. Nichols, Chair of the Board, California Air Resources Board (w/ enclosures)
Richard Corey, Executive Officer, California Air Resources Board (w/ enclosures)
Edmund G. Brown, Jr., Governor, State of California (w/ enclosures)
Loretta Lynch, United States Attorney General (w/ enclosures)
Kamala D. Harris, California Attorney General (w/ enclosures)

Exhibit A

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GLOBAL COMMUNITY MONITOR, a California nonprofit corporation; LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION NO. 783, an organized labor union; RANDAL SIPES, JR., an individual; RUSSEL COVINGTON, an individual,

Plaintiffs,

v.

MAMMOTH PACIFIC, L.P., a California Limited Partnership; ORMAT NEVADA, INC., a Delaware Corporation; ORMAT TECHNOLOGIES, INC., a Delaware Corporation; and DOES I-X, inclusive,

Defendants.

No. 2:14-cv-01612-MCE-KJN

MEMORANDUM AND ORDER

Plaintiffs Global Community Monitor, Laborers' International Union of North America Local Union No. 783, Randal Sipes, Jr., and Russel Covington (collectively, "Plaintiffs") filed a citizen suit pursuant to section 304(a) of the federal Clean Air Act, 42 U.S.C. § 7604, which allows any person to bring a lawsuit in federal court against any person who violates an "emission standard or limitation."[1]

[1] The term "emission standard or limitation" includes "a schedule or timetable of compliance, emission limitation, standard of performance or emission standard" and "any other standard, limitation, or schedule established . . . under any applicable State implementation plan approved by the Administrator,

Presently before the Court are two motions: (1) Defendants' Motion to Dismiss for Failure to Join Necessary and Indispensable Parties under Federal Rules of Civil Procedure ("FRCP") 12(b)(7) and 19; and (2) Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim for Which Relief Can be Granted under FRCP 12(b)(1) and 12(b)(6). For the reasons stated below, Defendant's first Motion (ECF No. 14) is DENIED and Defendant's second Motion (ECF No. 17) is GRANTED in part and DENIED in part.[2]

BACKGROUND

Plaintiffs' Complaint asserts eight causes of action against Defendants Mammoth Pacific, L.P., Ormat Technologies, Inc., and Ormat Nevada, Inc. (collectively "Defendants"), the owners and operators of several geothermal plants located in the Great Basin Valleys Air Basin. Three of the plants—(1) Mammoth Pacific I (MP-I), which is made up of MP-I East and MP-I West; (2) Mammoth Pacific II (MP-II); and (3) Pacific Lighting Energy Systems Unit I (PLES-I)—are operational. Another plant, M-1, is a proposed replacement plant for MP-I that has thus far only received local land use permits.

At the plants, Defendants use hot geothermal water pumped from deep underground to heat volatile organic compounds ("VOC"), which in turn spin turbines to generate electricity. The facilities emit VOCs (in the form of fugitive emissions of either n-pentane or isobutene) through valves, flanges, seals, or other unsealed joints in facility equipment. VOCs combine with nitrogen oxides to form ozone in the atmosphere. Ozone is a criteria air pollutant regulated by the Clean Air Act, and thus VOCs are

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any permit term or condition, and any requirement to obtain a permit as a condition of operations." 42 U.S.C. § 7604(f).

[2] Because oral argument would not have been of material assistance, the Court ordered this matter submitted on the briefing. E.D. Cal. L. R. 230(g).

regulated as ozone precursors. According to the United States Environmental Protection Agency ("EPA"), breathing ground-level ozone can result in a number of negative health effects, including induction of respiratory symptoms, decrements in lung function, and inflammation of airways. Plaintiffs are individuals and organizations with members who live, work, and recreate in direct vicinity of the plants.

The Great Basin Unified Air Pollution Control District (the "Air District") is the state agency charged with developing air regulations for Mono, Inyo and Alpine Counties. The Air District has established rules and regulations to reduce the emission of ozone-forming pollutants. On August 20, 1979, the Air District promulgated Rules 209-A and 209-B. Rule 209-A prohibits the Air District from issuing an authority to construct ("ATC") permit for any new stationary source or modification[3] to a stationary source that emits 250 pounds per day or more of VOCs unless the facility obtains emissions offsets and installs the best available control technology ("BACT"). Emissions offsets are reductions from other facilities equal to the amount of increased emissions and BACT is advanced pollution control technology that dramatically reduces pollution. Rule 209-B prohibits the Air District from issuing a permit to operate ("PTO") for any new or modified stationary source to which Rule 209-A applies unless the owner or operator of the source has obtained an ATC permit granted pursuant to Rule 209-A. In combination, these rules ensure that all required emissions offsets will be implemented at start-up and maintained throughout the source's operational life. Rules 209-A and 209-B were approved by the EPA as part of California's State Implementation Plan ("SIP") on June 18, 1982, making the regulations fully-enforceable federal law. See Safe Air for Everyone v. U.S. EPA, 488 F.3d 1088, 1096-97 (9th Cir. 2007).

Plaintiff's Complaint alleges that Defendants violated both Rule 209-A and 209-B. With respect to the existing plants, Plaintiffs allege that while originally separately permitted as four plants in the late 1980s, in 2010 Defendants applied for and obtained

[3] Modification is defined as "any physical change in, change in method of operation of, or addition to an existing stationary source, except that routine maintenance or repair shall not be considered to be a physical change." Rule 209-A(F)(2).

PTOs from the Air District that authorize combined emissions limits for MP-I East and MP-I West as a single source and for MP-II and PLES-I as a single source. Each single source was permitted to emit up to 500 pounds per day of fugitive VOC emissions—double the limit under Rule 209-A—without receiving ATC permits that required installing BACT and obtaining emissions offsets. Additionally, Plaintiff alleges that in 2013, the Air District issued ATC permits for a modification of MP-I without requiring Defendants to install BACT or obtain emissions offsets.

Plaintiff's Complaint also alleges that Defendants have operated the three existing geothermal plants for over twenty years as a single stationary source without applying for the permits required by Rules 209-A and 209-B.[4] Plaintiffs contend that the complex should be viewed as a single stationary source because the plants are owned and operated by the same company, located on adjacent lands, and share a single geothermal wellfield, a common control room, common pipes that carry geothermal liquid to and from wellfield and other common facilities.

Plaintiffs request that the Court issue a preliminary and permanent injunction requiring Defendants to cease and desist from any operation of the existing plants until Defendants install BACT and obtain emissions offsets.

While Plaintiffs originally challenged the proposed M-1 facility's permitting and sought an injunction to halt construction, they now concede that the Court does not have jurisdiction to consider these claims since the Air District has yet to issue permits to Defendants for this plant. ECF No. 21 at 8. Accordingly, Plaintiffs' sixth and seventh causes of action, which pertain to the M-1 facility, are DISMISSED. Additionally, because of this concession, on the second Motion to Dismiss, the Court will consider only Defendants' remaining argument that Plaintiffs failed to state a claim under which

[4] Rule 209-A defines "Stationary Source" as

> any aggregation of air-contaminant emitting equipment which includes any structure, building, facility, equipment, installation or operation (or aggregation thereof) which is located on one or more bordering properties within the District and which is owned, operated, or under shared entitlement use by the same person.

relief can be granted in their first, second, third, fourth, fifth and eighth causes of action and thus the case should be dismissed under FRCP 12(b)(6).

STANDARD

On a motion to dismiss for failure to state a claim under FRCP 12(b)(6), all allegations of material fact must be accepted as true and construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996). FRCP 8(a)(2) "requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). A complaint attacked by a FRCP 12(b)(6) motion to dismiss does not require detailed factual allegations. However, "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Id. (internal citations and quotations omitted). A court is not required to accept as true a "legal conclusion couched as a factual allegation." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 555). "Factual allegations must be enough to raise a right to relief above the speculative level." Twombly, 550 U.S. at 555 (citing 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure, § 1216 (3d ed. 2004) (stating that the pleading must contain something more than "a statement of facts that merely creates a suspicion [of] a legally cognizable right of action")).

Furthermore, FRCP "8(a)(2) . . . requires a showing, rather than a blanket assertion, of entitlement to relief." Twombly, 550 U.S. at 555 n.3 (internal citations and quotations omitted). Thus, "[w]ithout some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirements of providing not only 'fair notice' of the nature of the claim, but also 'grounds' on which the claim rests." Id. (citing Wright &

Miller, supra, at 94, 95). A pleading must contain "only enough facts to state a claim to relief that is plausible on its face." Id. at 570. If the plaintiffs "have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed." Id. However, "[a] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.'" Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)).

A court granting a motion to dismiss a complaint must then decide whether to grant leave to amend. Leave to amend should be "freely given" where there is no "undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of the amendment . . . ." Foman v. Davis, 371 U.S. 178, 182 (1962); see Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to be considered when deciding whether to grant leave to amend). Not all of these factors merit equal weight. Rather, "the consideration of prejudice to the opposing party . . . carries the greatest weight." Id. (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 185 (9th Cir. 1987)). Dismissal without leave to amend is proper only if it is clear that "the complaint could not be saved by any amendment." Intri-Plex Techs. v. Crest Group, Inc., 499 F.3d 1048, 1056 (9th Cir. 2007) (citing In re Daou Sys., Inc., 411 F.3d 1006, 1013 (9th Cir. 2005)); "Leave need not be granted where the amendment of the complaint . . . constitutes an exercise in futility." Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989).

ANALYSIS

In their 12(b)(6) Motion, Defendants argue that Plaintiffs' complaint fails to state a claim for which relief can be granted for five reasons: (1) the Clean Air Act's new source performance standards do not apply to Defendants' facilities, so Plaintiffs' claims under Clean Air Act section 111(e) fail as a matter of law; (2) Defendants' facilities are not

located in a federal ozone nonattainment area, and thus Plaintiffs' claims under Clean Air Act section 173(a) fail as a matter of law;[5] (3) Rule 209 does not apply to Defendants as the only emissions from Defendants' facilities are fugitive, and Rule 209 does not explicitly include fugitive emissions; (4) Plaintiffs have failed to allege facts showing a violation of Rules 209-A or 209-B; and (5) Plaintiffs may not collaterally attack Defendants' existing permits via a citizen suit.

Before reaching the merits of Defendants' 12(b)(6) Motion, the Court must first determine whether it has jurisdiction to hear this case.

A. Necessary and Indispensable Parties

Defendants argue that the Court lacks jurisdiction because the Air District and the EPA are necessary and indispensable parties to this case. The Clean Air Act creates an "unusual, bifurcated jurisdictional scheme" that divides jurisdiction between the federal district and circuit courts. Sierra Club v. Thomas, 828 F.2d 783, 794 (D.C. Cir. 1987). Pursuant to the Clean Air Act's judicial review provision, "[a] petition for review of the [EPA] Administrator's action in approving or promulgating any [state] implementation plan . . . or any other final action of the Administrator under this chapter . . . may be filed only in the United States Court of Appeals for the appropriate circuit." 42 U.S.C. § 7607(b)(1) (emphasis added). Certainly, the Air District may be joined without depriving the Court of jurisdiction. But if the Court determines that the EPA is a necessary and indispensable party because Plaintiffs are asking the Court to review a final action by the EPA, only the Ninth Circuit Court of Appeals would have jurisdiction over this case, and this Court would have to dismiss it.

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[5] The Court does not address these first two arguments, as Plaintiffs have essentially conceded—despite language in the Complaint to the contrary—that their arguments are based on Rule 209 and not sections 111(e) and 173(a) of the Clean Air Act. See Pls.' Opp., ECF No. 21, at 14 ("The instant case does not seek to enforce nationwide 'standards of performance' . . . the action seeks to enforce Rule 209."). Any allegations as to violations of sections 111(e) and 173(a) in the Complaint are therefore STRICKEN. See Compl. at ¶¶ 120, 104, 119, 127, 134. Despite these concessions, the Court must still consider whether Defendants have violated Rule 209, a full-enforceable federal law independent of sections 111(e) and 173(a).

Under FRCP 19, the Court must make three successive inquiries to determine if a party is necessary and indispensable. First, the Court "must determine whether a nonparty should be joined under Rule 19(a)," in other words, whether the absent party is "necessary." E.E.O.C. v. Peabody W. Coal Co., 400 F.3d 774, 779 (9th Cir. 2005). If the Court determines that an absent party is a "necessary party" under FRCP 19(a), "the second stage is for the court to determine whether it is feasible to order that the absentee be joined." Id. "Finally, if joinder is not feasible, the court must determine at the third stage whether the case can proceed without the absentee, or whether the absentee is an 'indispensable party' such that the action must be dismissed." Id. A person is considered an "indispensable party" when "he cannot be made a party and, upon consideration of the [FRCP 19(b)] factors . . . , it is determined that in his absence it would be preferable to dismiss the action, rather than to retain it." Id. at 780. The inquiry under FRCP 19 is "a practical one and fact specific . . . and is designed to avoid the harsh results of rigid application." Makah Indian Tribe v. Verity, 920 F.3d 555, 558 (1990) (citations omitted). The moving party, here Defendants, has the burden of persuasion in arguing for dismissal. Id.

"There is no precise formula for determining whether a particular non-party is necessary to an action." Confederated Tribes of Chehalis Indian Reservation v. Lujan, 928 F.2d 1496, 1498 (9th Cir. 1991) (internal citations and quotations omitted). "The determination is heavily influenced by the facts and circumstances of each case." Id. In conducting this analysis, the Court must examine whether it "can award complete relief to the parties present without joining the non-party" or, alternatively, "whether the non-party has a 'legally protected interest' in [the] action that would be 'impaired or impeded' by adjudicating the case without it." Paiute-Shoshone Indians of the Bishop Cmty. of the Bishop Colony, Cal. v. City of Los Angeles, 637 F.3d 993, 997 (9th Cir. 2011) (internal citations omitted). If the Court answers either of these questions in the affirmative, the absent party is a "required party" under Rule 19(a). Id.

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The "complete relief" factor considers whether the existing parties can obtain "consummate rather than partial or hollow relief" and whether there is a real possibility of "multiple lawsuits on the same cause of action." Northrop Corp. v. McDonnel Douglas Corp., 705 F.2d 1030, 1043 (9th Cir. 1983). According to Plaintiffs, "[c]omplete relief in this matter would be an order from the Court requiring Defendants to cease and desist from . . . operation of its geothermal facilities until they comply with Rule 209-A and 209-B and an order requiring defendants to install BACT and obtain offset emissions for those facilities in accordance with Rule 209-A and 209-B." Pls.' Opp., ECF No. 22, at 8.

It is undisputed that the Court has the authority to enforce Rule 209-A and Rule 209-B in this citizen suit. "Approved SIPs may be enforced 'by either the State, the EPA, or via citizen suits.'" Cal. Dump Truck Owners Ass'n v. Nichols, No. 13-15175, 2015 WL 1883368, at *1 (9th Cir. Apr. 27, 2015) (citing Bayview Hunters Point Cmty. Advocates v. Metro. Transp. Comm'n, 366 F.3d 692, 695 (9th Cir. 2004)). When a citizen suit is brought to compel enforcement, the Court "has the authority and indeed the responsibility to enforce the provisions of [a] SIP." Citizens for a Better Env't v. Deukmejian, 731 F. Supp. 1448, 1454 (N.D. Cal. 1990) (quoting NRDC v. New York, 668 F. Supp. 848, 854 (1987)); see also 42 U.S.C. § 7604(a) ("The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be."). Thus, the issue before the Court is whether enforcement of Rule 209—Plaintiffs' requested relief—requires the joinder of the Air District and the EPA.

Defendants argue that enforcement would require ordering the Air District to issue new permits, relief the Court cannot provide without the Air District's joinder. Defendants further argue that Plaintiffs' interpretation of the Rules 209-A and 209-B is incorrect and that "in order to grant Plaintiffs' requested relief, the Court must order the [Air District] to interpret and apply Rule 209 in a manner completely at odds with both the plain language of the Rule and the District's method of administering it." Defs.' Reply, ECF

No. 25, at 5. Additionally, since EPA previously adopted Rule 209 as part of the SIP, and only the EPA can make changes to the SIP, Defendants argue that complete relief would also require joinder of the EPA. See Safe Air for Everyone, 488 F.3d at 1097.

Further complicating the issue is the fact that Plaintiffs later state, in passing, that they seek "relief that would oblige Defendants to apply for and obtain permits that comply with Rule 209-A and 209-B." Pls.' Opp'n., ECF No. 22, at 10. While the Court would have the authority to order Defendants to apply for permits, it does not have the authority to order Defendants to obtain permits. Only the Air District can issue permits to Defendants, and the Air District is not currently a party to this case. However, the Court does not need to definitively decide at this point in the litigation whether enforcement of Rule 209 requires Defendants to obtain new permits that contain BACT and emission offset requirements, or if the Court can simply order Defendants to install BACT and acquire emissions offsets. Even if Defendants were required to obtain new permits from the Air District—and are therefore forced to cease operations until the Air District completes a review of the permit applications—Plaintiffs would have the relief that they seek: fewer VOC emissions in the Great Basin Valleys Air Basin. See Ass'n to Protect Hammersley, Eld, & Totten Inlets v. Taylor Res., Inc., 299 F.3d 1007, 1014-15 (9th Cir. 2002) (finding complete relief could be achieved without the state agency because plaintiff would find complete relief regardless of whether defendant was able to acquire a permit). Thus, the prospective benefit does not depend "on independent decisions of government entities not a party to the pending lawsuit." California Dump Truck Owners Association v. Nichols, 924 F. Supp. 2d 1126, 1147 (E.D. Cal. 2012) (quoting San Joaquin River Group Auth. v. Nat'l Marine Fisheries, 819 F. Supp. 2d 1077, 1097 (E.D. Cal. 2011)), aff'd, No. 13-15175, 2015 WL 1883368 (9th Cir. Apr. 27, 2015). As discussed more fully below, modification of Rule 209 (and thus the SIP) is not a conceivable outcome of this case. Therefore, complete relief does not require joinder of the EPA.

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Alternatively, in determining whether an absentee is a "necessary" party under FRCP 19, the Court may consider "whether the non-party has a 'legally protected interest' in [the] action that would be 'impaired or impeded' by adjudicating the case without it." Paiute-Shoshone Indians, 637 F.3d at 997 (internal quotations and citations omitted). The absentee's interest "must be more than a financial stake, and more than speculation about a future event." Makah Indian Tribe, 910 F.2d at 558 (citations omitted). Impairment of the absentee's interest "may be minimized if the absent party is adequately represented in the suit." Id. (internal citations omitted). In assessing whether an existing party can adequately represent the interests of the absent party, courts consider the following three factors: (1) "whether the interests of a present party to the suit are such that it will undoubtedly make all of the absent party's arguments," (2) "whether the party is capable of and willing to make such arguments," and (3) "whether the absent party would offer any necessary element to the proceedings that the present parties would neglect." Shermoen v. United States, 982 F.2d 1312, 1318 (9th Cir. 1992) (internal citations and quotations omitted).

In arguing that the Air District and EPA have a legally protected interest in this action, Defendants liken this case to Nichols, where this Court held that "[a] public agency has an interest in a lawsuit that could result in the invalidation or modification of one of its . . . rules [or] regulations." 924 F. Supp. 2d at 1147 (quoting E.E.O.C., 610 F.3d at 1082). Contrary to Defendants' argument, however, this action is not analogous to Nichols.

In Nichols, the plaintiff challenged the constitutionality of a regulation that became part of the SIP during the course of litigation. The plaintiff sought a declaration from the Court that the regulation was preempted by federal law and sought a permanent injunction on the regulation's enforcement. Here, in contrast, Plaintiffs have brought a citizen suit ostensibly to enforce compliance with two regulations that were promulgated in the 1980s. Plaintiffs argue that Rule 209, as written, requires BACT or emissions offsets at Defendants' plants. Plaintiffs are not seeking to have the rule invalidated or

altered like the plaintiffs in Nichols, nor would this suit have the possible outcome of invalidating or altering Rule 209. Thus, this situation is not a direct challenge to EPA's final action of adopting the SIP, nor does it have the practical effect of upsetting EPA's final action. See id. at 1139.

In adjudicating a citizen suit, the Court only has jurisdiction to enforce a regulation as written. See El Comité Para El Beinstar de Earlimart v. Warmerdam, 539 F.3d 1062, 1066, 1073 (9th Cir. 2008) (holding that in a citizen suit under the CAA, the district court had jurisdiction only to enforce an "emission standard or limitation," and that any challenge related to the validity of the SIP "would have to be brought as a petition to review the EPA's rulemaking process"). "Plaintiffs seeking to bring a citizen suit for violation of an emission standard or limitation contained in a SIP must allege a violation of a specific strategy or commitment in the SIP." Cmtys. for a Better Env't v. Cenco Ref. Co., 180 F. Supp. 2d 1062, 1077 (C.D. Cal. 2001) (internal citation and quotation omitted). A citizen suit "may not be maintained solely to force regulators to attain the [air quality standards] or to modify or amend a SIP to conform to a plaintiff's own notion of proper environmental policy." Id.[6] Thus, there are two possible outcomes in this case: (1) Plaintiffs are correct and Defendants have violated Rule 209, resulting in a Court order that enforces Rule 209 against Defendants; or (2) Plaintiffs are incorrect and Defendants have not violated Rule 209, resulting in a judgment in Defendants' favor. There is no third option in which this suit, as currently brought, results in the modification of Rule 209.

While the regulations are not in danger of invalidation or modification, the Court agrees with Defendants that Plaintiffs directly challenge the Air District's previous application, and therefore interpretation, of Rule 209. Multiple permits have been issued to Defendants, and during each of those permitting processes, the Air District determined that Defendants were not required to install BACT or obtain emissions

[6] Defendants' argument that this action was incorrectly brought as a citizen suit is discussed below.

offsets under Rule 209. The onus was on the Air District to make this determination.[7] Thus, it is disingenuous for Plaintiffs to claim that their Complaint does not suggest "that the District misapplied its own rules." Pls.' Opp'n., ECF No. 22, at 10. That is exactly what the Complaint alleges. See Compl., ECF No. 1, at ¶ 8 (Defendants applied for "and obtained" permits in violation of Rule 209-A and 209-B); ¶¶ 81-82 (Defendants "applied for, and [the Air District] issued" ATC permit in violation of Rule 209-A); ¶ 87 (Defendants applied for "and obtained" ATC Permit in violation of Rule 209-A); ¶¶ 94-95 (Defendants applied for "and obtained" PTO permits from the Air District which should have been denied by the Air District); ¶¶ 103-104 (Defendants applied for "and obtained" PTO permits from the Air District in violation of Rule 209-B); and ¶ 119 (Defendants "illegally obtained PTOs that fail to comply with Rule 209-B" from the Air District).

However, a challenge to the interpretation of regulations does not rise to the level of "invalidation or modification." Citizen suits frequently challenge the interpretation of a regulation, as the suits are often brought under a claim that a state agency issued an invalid permit or incorrectly determined that a permit was not necessary. See Hammersly, 299 F.3d at 1013-15 (determining that a citizen suit was appropriate to challenge the state agency's failure to issue a permit); Cenco, 180 F. Supp. 2d at 1082 (holding that even though defendants already had a permit from the local air district, an allegedly invalid permit does not insulate the applicant from a citizen suit).

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[7] The first section of the regulation states:

> The Air Pollution Control Officer shall deny an authority to construct for any new stationary source or modification, or any portion thereof, unless:
>
> The new source or modification, or applicable portion thereof, complies with the provisions of this rule and all other applicable district rules and regulations; and
>
> The applicant certifies that all other stationary sources in the State which are owned or operated by the applicant are in compliance, or on approved schedule for compliance, with all applicable emissions limitations and standards under the Clean Air Act (42 USC 7401 et. seq.) and all applicable emission limitations and standards which are part of the State Implementation Plan approved by the Environmental Protection Agency.

Rule 209-A(A) (emphasis added).

The general rule is that "federal and state agencies administering federal environmental laws are not necessary parties in citizen suits to enforce the federal environmental laws." Hammersley, 299 F.3d at 1014 (citing Friends of Earth v. Carey, 535 F.2d 165, 173 (2d Cir. 1976) (EPA not a necessary party in Clean Air Act citizen suit); Metro. Wash. Coal. for Clean Air v. Dist. of Columbia, 511 F.2d 809, 814-15 (D.C. Cir. 1975) (per curiam) (same); Sierra Club v. Young Life Campaign, Inc., 176 F. Supp. 2d 1070, 1078-80 (D. Colo. 2001) (state not necessary party in Clean Water Act citizen suit); Student Pub. Interest Research Group of N.J., Inc. v. Monsanto Co., 600 F. Supp. 1479, 1484 (D. N.J. 1985) (state and EPA not necessary parties in Clean Water Act citizen suit). While that maxim usually refers to situations where the agencies decide not to prosecute the action themselves, it also applies to situations like this, where the agency is a possible defendant. The citizen suit provision allows citizens to sue the violators directly without including the administering agencies as defendants. Id.

While the Air District may have an interest in defending its current interpretation of the rules, this interest would be well represented by Defendants, as the beneficiaries of permits issued under that current interpretation. The Court does not doubt that the interests of Defendants "are such that [they] will undoubtedly make all of the absent party's arguments," that Defendants are "capable of and willing to make such arguments," and that the Air District "would offer any necessary element to the proceedings that the present parties would neglect." Shermoen, 982 F.2d at 1318. Therefore, this is not enough to make the Air District a necessary party.

Because the EPA and Air District do not have a sufficient interest in this case to be necessary parties, they also cannot be considered indispensable. "Indispensable parties under Rule 19(b) are persons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience." E.E.O.C., 400 F.3d at 780 (internal quotation marks and citation omitted). Accordingly, the Court

has jurisdiction to consider the merits of this case and must deny Defendants' Motion to Dismiss for Failure to Join Necessary and Indispensable Parties.

B. FRCP 12(b)(6) Motion to Dismiss

The Court will first address the threshold issue of whether this case was appropriately brought as a citizen suit. Plaintiffs' Complaint is based on two assertions: (1) that permits issued for Defendants' existing plants were improperly issued by the Air District because they did not comply with Rule 209; and (2) that Defendants should have sought a permit for the "Complex" of plants because it qualifies as a stationary source under Rule 209. Pursuant to section 304(a) of the federal Clean Air Act, a citizen suit may be brought against any person who violates an "emission standard or limitation." Contrary to Defendants' argument that a citizen suit must be brought in order to enforce a standard or limitation in a permit, the term "emission standard or limitation" includes "a schedule or timetable of compliance, emission limitation, standard of performance or emission standard" and "any other standard, limitation, or schedule established . . . under any applicable State implementation plan approved by the Administrator, any permit term or condition, and any requirement to obtain a permit as a condition of operations." 42 U.S.C. § 7604(f) (emphasis added).

Rule 209 is an emissions standard or limitation contained in California's SIP. The regulation requires applicants to obtain permits prior to construction (ATC) and prior to beginning operations (PTO). As discussed previously, the fact that the Air District has issued permits that purport to comply with Rule 209 or have chosen not to issue a permit for the Complex as a whole under Rule 209 does not make this action inappropriate for a citizen suit. See Cenco, 180 F. Supp. 2d at 1082; Hammersley, 299 F.3d at 1011-12. Once it is established that the citizen suit seeks to enforce an emissions standard or limitation, the Court must only confirm that the procedural requirements were met. Hammersley, 299 F.3d at 1012. Here, Plaintiffs have complied with the procedural requirements by notifying the EPA and the Air District sixty days before commencing this litigation. Thus, the Court has jurisdiction to consider the merits of Plaintiffs' claims.

The Court will next address whether Rule 209 applies to Defendants' fugitive emissions. The only emissions from Defendants' plants are fugitive; that is, they come from leaks at the plant and not from a smoke stack or chimney like a "point source" emission. See Ala. Power v. Costle, 636 F.2d 323, 368 (D.C. Cir. 1979). There is no definition for "fugitive emissions" in Rule 209. Defendants argue that because Rule 209 does not define "fugitive emissions," the Rule should be interpreted in a manner consistent with other federal law regarding fugitive emissions. Under federal law, fugitive emissions from a stationary source are not included in determining whether the source is a "major stationary source" (unless the source belongs in one of 28 listed categories, geothermal binary power plants not included). See 40 CFR. 70.2. Defendants' plants fall under the minor source program, so this federal rule is not directly on point.[8]

The plain language of Rule 209 simply states that the rule applies to "any pollutant for which there is a national ambient air quality standard (excluding carbon monoxide), or any precursor of such pollutant." Rule 209-A(B)(2)(a). As previously stated, VOCs are regulated as precursors to Ozone, for which there is a national ambient air quality standard. "As a general interpretative principle, 'the plain meaning of a regulation governs.'" Safe Air for Everyone, 488 F.3d at 1097 (quoting Wards Cove Packing Corp. v. Nat'l Marine Fisheries Serv., 307 F.3d 1214, 1219 (9th Cir. 2002)). "The plain language of a regulation, however, will not control if 'clearly expressed [administrative] intent is to the contrary or [if] such plain meaning would lead to absurd results.'" Id. (quoting Dyer v. United States, 832 F.2d 1062, 1066 (9th Cir. 1987)). Defendants argue that when calculating total emissions it would be absurd for fugitive emissions to be exempt for large, major sources but not for minor sources. While persuasive, at this stage in the litigation, the Court is not willing to infer a distinction

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[8] In the regulations of major sources, the Air District does include the same definition and exception found in the federal regulations. See Rule 218(B)(7) ("Fugitive emissions of these pollutants shall be considered in calculating total emissions for stationary sources in accordance with 40 CFR Part 70.2); and Rule 217(II)(Z)(2) (same).

between fugitive and point source emissions in Rule 209 when they are not clearly delineated in the Rule itself.[9]

The Court also notes that the Air District has been regulating Defendants' emissions, even though they are fugitive, in each permit it issued to Defendants over the past 25 years. The permits have also limited the fugitive emissions from Defendants' plants to 250 pounds per day, ostensibly to avoid triggering Rule 209's BACT and emission offsets requirements. Defendants argue that a permit limitation is distinct from a requirement in the regulation itself to consider fugitive emissions when calculating a net emissions increase. While this may be true, at this stage in the litigation, the Court finds that the plain language of the Rule along with the previous regulation of fugitive emissions by the Air District is sufficient to show that Plaintiffs may have a cause of action against Defendants under Rule 209 based solely on fugitive emissions.

At the conclusion of the parties' briefing on the Motions to Dismiss, Plaintiffs raise two remaining arguments as to how Defendants violated Rule 209-A:[10] (1) that in 2010, the issuance of PTO permits combining of MP-I West with MP-I East and MP-II with PLES-I violated Rule 209 because the permits did not impose BACT and offset requirements despite the fact that the emissions could be as high as 500 pounds per day per combined plant; and (2) that Defendants' four existing plants constitute a single stationary source within the meaning of Rule 209, and thus when each facility was permitted, Defendants added another 250 pounds per day of VOCs to the "Complex" without obtaining the appropriate permits under Rule 209.

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[9] This is especially true since the major source regulations cited by Defendants show that the Air District is capable of making a distinction between fugitive and point source emissions, but chose not to do so in this regulation.

[10] By failing to oppose Defendants' arguments in their Motion to Dismiss, Plaintiffs appear to concede that the 2013 modification, which involved an upgrade to MP-I's facility turbines and condensers and approved a change in motive fluid in order to decrease emissions, does not trigger the BACT or offset requirements of Rule 209. See Tatum v. Schwartz, No. 2:06-cv-01440-DFL-EFB, 2007 WL 419463, *3 (E.D. Cal. Feb. 5, 2007). Therefore, Plaintiffs' First Cause of Action, which pertains to the 2013 modification, must be DISMISSED.

In regard to the combining of the plants in 2010, Defendants argue that in both cases, two 250 pounds per day plants became one 500 pounds per day plant, which cannot lead to an increase in emissions. Defendants contend that the amount of emissions allowed in the permit establishes the emissions amount when calculating whether there would be an increase. Rule 209 does state that "emissions from an existing source shall be based on the specific limiting conditions set forth in the source's authority to construct and permit to operate, and, where no such conditions are specified, on the actual operating conditions of the existing source averaged over the three consecutive years immediately preceding the date of application." Rule 209-A(C)(2) (emphasis added). Since there were conditions in the permits limiting these plants to 250 pounds per day, that amount is considered the emissions level for those existing sources.

However, there is a different test used for determining whether there is a net increase in emissions.

> A net increase for a modification is determined by comparing the yearly emissions profiles for the existing source to the yearly emissions profiles for the proposed source after modification. A net increase in emissions exists whenever any part of an emissions profile for a modified source exceeds the emission profile for the existing source.

Rule 209-A(C)(3). Therefore, the Court would have to look at the emissions levels in preceding years to determine whether there would be a net increase in emissions. According to Plaintiffs, the emissions from MP-I East and MP-I West had dropped to less than half of their permitted capacity due to aging equipment, so there could have been a net emissions increase from the previous yearly levels to the newly permitted amount of emissions. Compl. at ¶ 61. Because of this, Plaintiffs argue that there remains a factual issue on the previous level of emissions, which cannot be determined on a motion to dismiss. The Court disagrees, as this issue can be determined based on the

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permits themselves, of which the Court can take notice in determining this Motion to Dismiss.[11]

When the plants were "combined" in 2010, the Air District issued two separate ATCs and two separate PTOs for MP-I: one for MP-I East and one for MP-I West. The Air District took the same approach with the combination of PLES-I and MP-II. The most recently issued permits for the PLES-I and MP-II plants clearly state that "the combined point and fugitive n-butane emissions shall be limited to 250 pounds per day" for each plant. Jones Decl., ECF No. 15-18 at 3 (PLES-I) and ECF No. 15-19 at 3 (MP-II). Additionally, Plaintiffs have not alleged facts sufficient to show that the "combining" of the facilities was a modification under Rule 209. Modification is defined as "any physical change in, change in method of operation of, or addition to an existing stationary source, except that routine maintenance or repair shall not be considered to be a physical change." Rule 209-A(F)(2). A change in how the plants are described in the renewed PTO permits does not appear to be a change in the plants themselves or in the method of operation.

Even if a modification did occur, while the total emissions from both plants can be up to 500 pounds per day, the net increase in emissions into the atmosphere is no more than it was when the plants had individual limits of 250 pounds per day. While Plaintiffs argue that the plants were previously operating at "less than half" capacity, since each plant remains limited to 250 pounds per day, the plants would have to operate at zero capacity for there to be a net emissions increase of 250 pounds per day. Thus, no matter what the actual emissions were over the previous years, it is nearly impossible for the modification to result in a net increase of 250 pounds per day unless Plaintiffs could show that the plants were not operating at all. Therefore, Plaintiffs second, third, fourth and fifth causes of actions are DISMISSED.

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[11] When deciding a motion to dismiss, the Court "may consider evidence on which the complaint 'necessarily relies' if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the copy attached to the 12(b)(6) motion." Marder v. Lopez, 450 F.3d 445, 448 (9th Cir. 2006). Plaintiffs have not disputed the authenticity of the permits proffered by Defendants and have in fact cited to them in their Opposition.

Finally, in the eighth cause of action, Plaintiffs' argue that Defendants' "Complex" of plants constitutes a single stationary source within the meaning of Rule 209, and thus when each facility was permitted Defendants added another 250 pounds per day of emissions to the Complex's overall emissions. Plaintiffs contend that Defendants "piecemealed" their permitting by slowly adding plants until they had total emissions of 1,000 pounds per day but avoided the requirement in Rule 209 to offset these emissions or try to prevent the emissions by installing BACT once the emissions exceeded 250 pounds per day.

Under Plaintiffs' reading of Rule 209, the complex should be viewed as a single stationary source because the plants are owned and operated by the same company, located on adjacent lands, and share a single geothermal wellfield, a common control room, common pipes that carry geothermal liquid to and from wellfield, and other common facilities. Rule 209-A defines "Stationary Source" as

> any aggregation of air-contaminant emitting equipment which includes any structure, building, facility, equipment, installation or operation (or aggregation thereof) which is located on one or more bordering properties within the District and which is owned, operated, or under shared entitlement use by the same person. Items of air-contaminant-emitting equipment shall be considered aggregated into the same stationary source, and items of non-air-contaminant-emitting equipment shall be considered associated with air-contaminant-emitting equipment only if:
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> a. The operation of each item of equipment is dependent upon, or affects the process of, the other; and
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> b. The operation of all such items of equipment involves a common raw material or product.
>
> Emissions from all such aggregated items of air-contaminant-emitting equipment and all such associated items of non-air-contaminant-emitting equipment of a stationary source shall be considered emissions of the same stationary source.

Rule 209-A(F)(3).

Defendants counter that Rule 209 is triggered only if a new stationary source or modification to an existing source itself results in a net increase in emissions of 250 pounds per day, and "the Air District's minor source rules do not aggregate permit limits

from existing sources with those from new sources or modifications when assessing the 250 pounds per day trigger under Rule-209A(D)." Defs.' Reply, ECF No. 24, at 7.

It is not clear from the language of the regulation when and how a determination is made on what constitutes a stationary source under Rule 209. But it appears from the face of the complaint that this argument is plausible due to location and ownership of Defendants' plants and the definition of stationary source contained in the regulation. It also seems contrary to the intent of the regulation that an applicant could avoid triggering Rule 209's offset and BACT requirements by simply opening new plants next to existing plants, each emitting 250 pounds per day of VOCs. A pleading must contain "only enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570. While the Court has doubts about Plaintiff's success of recovery, the complaint may proceed on the eighth cause of action. See id. at 556 ("[a] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely'") (quoting Scheuer, 416 U.S. at 236).

CONCLUSION

For the foregoing reasons, Defendant's first Motion to Dismiss (ECF No. 14) is DENIED and Defendant's Second Motion to Dismiss (ECF No. 17) is GRANTED with leave to amend in part and DENIED in part. Plaintiffs' case proceeds on the eighth cause of action only. Not later than twenty (20) days following the date this Memorandum and Order is electronically filed, Plaintiffs may (but are not required to) file an amended complaint.

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If no amended complaint is filed within said twenty (20) day time period, without further notice to the parties, the causes of action dismissed by virtue of this Memorandum and Order will be dismissed with prejudice.[12]

IT IS SO ORDERED.

Dated: May 8, 2015

MORRISON C. ENGLAND, JR, CHIEF JUDGE
UNITED STATES DISTRICT COURT

[12] Defendants are admonished that their attempts to avoid the page limit requirements set by the Court by filing two motions to dismiss and putting over one hundred lengthy footnote in each filing will not be acceptable going forward and could be grounds for sanctions.

Exhibit B

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GLOBAL COMMUNITY MONITOR, a California nonprofit corporation, et al.,

Plaintiffs,

v.

MAMMOTH PACIFIC L.P., a California limited partnership, et al.,

Defendants.

No. 2:14-cv-01612 MCE-KJN

PRETRIAL SCHEDULING ORDER

After reviewing the parties' Joint Status Report, the Court makes the following Pretrial Scheduling Order.

I. SERVICE OF PROCESS

All named Defendants have been served and no further service is permitted without leave of court, good cause having been shown.

II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

No joinder of parties or amendments to pleadings is permitted without leave of court, good cause having been shown.

III. JURISDICTION/VENUE

Jurisdiction is predicated upon 42 U.S.C. section 7604(a), (c) and 28 U.S.C. section 1331. Jurisdiction and venue are not contested.

IV. DISCOVERY

All discovery, with the exception of expert discovery, shall be completed by **March 7, 2016.** In this context, "completed" means that all discovery shall have been conducted so that all depositions have been taken and any disputes relative to discovery shall have been resolved by appropriate order if necessary and, where discovery has been ordered, the order has been obeyed. All motions to compel discovery must be noticed on the magistrate judge's calendar in accordance with the local rules of this Court.

V. DISCLOSURE OF EXPERT WITNESSES

All counsel are to designate in writing, file with the Court, and serve upon all other parties the name, address, and area of expertise of each expert that they propose to tender at trial not later than **May 6, 2016.**[1] The designation shall be accompanied by a written report prepared and signed by the witness. The report shall comply with Fed. R. Civ. P. 26(a)(2)(B).

Within thirty (30) days after the designation of expert witnesses, any party may designate a supplemental list of expert witnesses who will express an opinion on a subject covered by an expert designated by an adverse party. The right to designate a supplemental expert for rebuttal purposes only shall apply to a party who has not previously disclosed an expert witness on the date set for expert witness disclosure by this Pretrial Scheduling Order.

Failure of a party to comply with the disclosure schedule as set forth above in all likelihood will preclude that party from calling the expert witness at the time of trial. An expert witness not appearing on the designation will not be permitted to testify unless the party offering the witness demonstrates: (a) that the necessity for the witness could not have been reasonably anticipated at the time the list was proffered; (b) that the Court

[1] The discovery of experts will include whether any motions based on Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) and/or Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999) are anticipated.

and opposing counsel were promptly notified upon discovery of the witness; and (c) that the witness was promptly made available for deposition.

For purposes of this Pretrial Scheduling Order, an "expert" is any person who may be used at trial to present evidence under Rules 702, 703, and 705 of the Federal Rules of Evidence, which include both "percipient experts" (persons who, because of their expertise, have rendered expert opinions in the normal course of their work duties or observations pertinent to the issues in the case) and "retained experts" (persons specifically designated by a party to be a testifying expert for the purposes of litigation).

Each party shall identify whether a disclosed expert is percipient, retained, or both. It will be assumed that a party designating a retained expert has acquired the express permission of the witness to be so listed. Parties designating percipient experts must state in the designation who is responsible for arranging the deposition of such persons.

All experts designated are to be fully prepared at the time of designation to render an informed opinion, and give their bases for their opinion, so that they will be able to give full and complete testimony at any deposition taken by the opposing party. Experts will not be permitted to testify at the trial as to any information gathered or evaluated, or opinion formed, after deposition taken subsequent to designation.

Counsel are instructed to complete all discovery of expert witnesses in a timely manner in order to comply with the Court's deadline for filing dispositive motions.

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VI. MOTION HEARING SCHEDULE

The last day to hear dispositive motions shall be **September 15, 2016.** All papers should be filed in conformity with the Local Rules. However, with respect to Motions for Summary Judgment only, the parties shall comply with the following filing deadlines:

Motion for Summary Judgment	filed at least 8 weeks prior to hearing
Opposition and any cross-motion	filed at least 5 weeks prior to hearing
Reply and opposition to cross-motion	filed at least 3 weeks prior to hearing
Reply to cross-motion	filed at least 1 week prior to hearing

Absent leave of the Court, all issues the parties wish to resolve on summary judgment must be raised together in one (1) motion or cross-motion. Should the parties wish to file additional motions for summary judgment, they must seek leave of the Court.

The parties are directed to the Court's website for available hearing dates. (www.caed.uscourts.gov → choose Judges → choose Judge England → choose Standard Information)

All purely legal issues are to be resolved by timely pretrial motions. When appropriate, failure to comply with Local Rules 230 and 260, as modified by this Order, may be deemed consent to the motion and the Court may dispose of the motion summarily. With respect to motions for summary judgment, failure to comply with Local Rules 230 and 260, as modified by this Order, may result in dismissal for failure to prosecute (or failure to defend) pursuant to this Court's inherent authority to control its docket and/or Federal Rule of Civil Procedure 41(b). Further, failure to timely oppose a summary judgment motion[2] may result in the granting of that motion if the movant shifts

[2] The Court urges any party that contemplates bringing a motion for summary judgment or who must oppose a motion for summary judgment to review Local Rule 260.

the burden to the nonmovant to demonstrate that a genuine issue of material fact remains for trial.

The Court places a page limit for points and authorities (exclusive of exhibits and other supporting documentation) of twenty (20) pages on all initial moving papers, twenty (20) pages on oppositions, and ten (10) pages for replies. All requests for page limit increases must be made in writing to the Court setting forth any and all reasons for any increase in page limit at least seven (7) days prior to the filing of the motion.

For the Court's convenience, citations to the Supreme Court Lexis database should include parallel citations to the Westlaw database.

The parties are reminded that a motion in limine is a pretrial procedural device designed to address the admissibility of evidence. The Court will look with disfavor upon dispositional motions presented at the Final Pretrial Conference or at trial in the guise of motions in limine.

The parties are cautioned that failure to raise a dispositive legal issue that could have been tendered to the court by proper pretrial motion prior to the dispositive motion cut-off date may constitute waiver of such issue.

VII. FINAL PRETRIAL CONFERENCE

The Final Pretrial Conference is set for **January 5, 2017 at 2:00 p.m.** At least one of the attorneys who will conduct the trial for each of the parties shall attend the Final Pretrial Conference. If by reason of illness or other unavoidable circumstance a trial attorney is unable to attend, the attorney who attends in place of the trial attorney shall have equal familiarity with the case and equal authorization to make commitments on behalf of the client.

Counsel for all parties are to be fully prepared for trial at the time of the Final Pretrial Conference, with no matters remaining to be accomplished except production of witnesses for oral testimony.

The parties shall file, not later than **December 15, 2016**, a Joint Final Pretrial Conference Statement. The provisions of Local Rules 281 shall apply with respect to

the matters to be included in the Joint Final Pretrial Conference Statement. In addition to those subjects listed in Local Rule 281(b), the parties are to provide the Court with a plain, concise statement that identifies every non-discovery motion tendered to the Court and its resolution. Failure to comply with Local Rule 281, as modified by this Pretrial Scheduling Order, may be grounds for sanctions.

At the time of filing the Joint Final Pretrial Conference Statement, counsel shall also electronically mail to the Court in digital format compatible with Microsoft Word, the Joint Final Pretrial Conference Statement in its entirety including the witness and exhibit lists. **These documents shall be sent to: mceorders@caed.uscourts.gov.**

The parties should identify first the core undisputed facts relevant to all claims. The parties should then, in a concise manner, identify those undisputed core facts that are relevant to each claim. The disputed facts should be identified in the same manner. Where the parties are unable to agree as to what disputed facts are properly before the Court for trial, they should nevertheless list all disputed facts asserted by each party. Each disputed fact or undisputed fact should be separately numbered or lettered.

Each party shall identify and concisely list each disputed evidentiary issue which will be the subject of a motion in limine.

Each party shall identify the points of law which concisely describe the legal issues of the trial which will be discussed in the parties' respective trial briefs. Points of law should reflect issues derived from the core undisputed and disputed facts. Parties shall not include argument or authorities with any point of law.

The parties are reminded that pursuant to Local Rule 281 they are required to list in the Joint Final Pretrial Conference Statement all witnesses and exhibits they propose to offer at trial. After the name of each witness, each party shall provide a brief statement of the nature of the testimony to be proffered. The parties may file a joint list or each party may file separate lists. These list(s) shall not be contained in the body of the Joint Final Pretrial Conference Statement itself, but shall be attached as separate documents to be used as addenda to the Final Pretrial Order.

Plaintiffs' exhibits shall be listed numerically. Defendants' exhibits shall be listed alphabetically. The parties shall use the standard exhibit stickers provided by the Court Clerk's Office: pink for plaintiff and blue for defendant. In the event that the alphabet is exhausted, the exhibits shall be marked "AA-ZZ" and "AAA-ZZZ" etc. After three letters, note the number of letters in parenthesis (i.e., "AAAA(4)") to reduce confusion at trial. All multi-page exhibits shall be stapled or otherwise fastened together and each page within the exhibit shall be numbered. All photographs shall be marked individually. The list of exhibits shall not include excerpts of depositions, which may be used to impeach witnesses. In the event that Plaintiffs and Defendants offer the same exhibit during trial, that exhibit shall be referred to by the designation the exhibit is first identified. The Court cautions the parties to pay attention to this detail so that all concerned will not be confused by one exhibit being identified with both a number and a letter.

The Final Pretrial Order will contain a stringent standard for the offering at trial of witnesses and exhibits not listed in the Final Pretrial Order, and the parties are cautioned that the standard will be strictly applied. On the other hand, the listing of exhibits or witnesses that a party does not intend to offer will be viewed as an abuse of the Court's processes.

The parties also are reminded that pursuant to Rule 16 of the Federal Rules of Civil Procedure it will be their duty at the Final Pretrial Conference to aid the Court in: (a) the formulation and simplification of issues and the elimination of frivolous claims or defenses; (b) the settling of facts that should properly be admitted; and (c) the avoidance of unnecessary proof and cumulative evidence. Counsel must cooperatively prepare the Joint Final Pretrial Conference Statement and participate in good faith at the Final Pretrial Conference with these aims in mind. A failure to do so may result in the imposition of sanctions which may include monetary sanctions, orders precluding proof, elimination of claims or defenses, or such other sanctions as the Court deems appropriate.

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VIII. TRIAL BRIEFS

The parties shall file trial briefs not later than **December 22, 2016**. Counsel are directed to Local Rule 285 regarding the content of trial briefs.

IX. EVIDENTIARY AND/OR PROCEDURAL MOTIONS

Any evidentiary or procedural motions are to be filed by **December 15, 2016.** Oppositions must be filed by **December 22, 2016** and any reply must be filed by **December 29, 2016.** The motions will be heard by the Court at the same time as the Final Pretrial Conference.

X. TRIAL SETTING

The trial is set for **March 6, 2017 at 9:00 a.m**. Trial will be a bench trial. The parties estimate a trial length of **six (6) days**.

XI. SETTLEMENT CONFERENCE

At the Final Pretrial Conference, the Court may set a settlement conference if the parties so request. In the event no settlement conference is requested, the parties are free to continue to mediate or attempt to settle the case with the understanding that the trial date is a firm date.

In the event a settlement conference is set by the Court, counsel are instructed to have a principal with full settlement authority present at the Settlement Conference or to be fully authorized to settle the matter on any terms. At least seven (7) calendar days before the settlement conference, counsel for each party shall submit to the chambers of the settlement judge a confidential Settlement Conference Statement. Such statements are neither to be filed with the Clerk nor served on opposing counsel. Each party, however, shall serve notice on all other parties that the statement has been submitted. If the settlement judge is not the trial judge, the Settlement Conference Statement shall not be disclosed to the trial judge.

Notwithstanding the foregoing, the parties may request a settlement conference prior to the Final Pretrial Conference if they feel it would lead to the possible resolution of the case. In the event an early settlement conference date is requested, the parties shall

file said request jointly, in writing. The request must state whether the parties waive disqualification, pursuant to Local Rule 270(b), before a settlement judge can be assigned to the case. Absent the parties' affirmatively requesting that the assigned Judge or Magistrate Judge participate in the settlement conference AND waiver, pursuant to Local Rule 270(b), a settlement judge will be randomly assigned to the case.

XII. VOLUNTARY DISPUTE RESOLUTION PROGRAM

Pursuant to Local Rule 271 parties will need to lodge a stipulation and proposed order requesting referral to the Voluntary Dispute Resolution Program.

XIII. MODIFICATION OF PRETRIAL SCHEDULING ORDER

The parties are reminded that pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, the Pretrial Scheduling Order shall not be modified except by leave of court upon a showing of **good cause**. Agreement by the parties pursuant to stipulation alone to modify the Pretrial Scheduling Order does not constitute good cause. Except in extraordinary circumstances, unavailability of witnesses or counsel will not constitute good cause.

XIV. OBJECTIONS TO PRETRIAL SCHEDULING ORDER

This Pretrial Scheduling Order will become final without further order of the Court unless objections are filed within seven (7) court days of service of this Order.

IT IS SO ORDERED.

Dated: August 10, 2015

MORRISON C. ENGLAND, JR, CHIEF JUDGE
UNITED STATES DISTRICT COURT

Exhibit C

Steve Jones

From:	Steve Jones
Sent:	Monday, April 18, 2016 6:20 PM
To:	'Doug Chermak'
Cc:	Emily Schilling; Marie Durrant
Subject:	Confirming this afternoon's telephone conversation and next steps

Doug:

I am writing to confirm our telephone conversation this afternoon regarding: (1) your clients' March 22, 2016 Notice of Intent to File Suit and Plaintiffs' request for a stipulation allowing amendment of their Complaint; (2) the timing and location for expert depositions; and (3) an agreed schedule for filing cross-motions for summary judgment.

1. Notice of Intent Letter and Plaintiffs' Request for a Stipulation Allowing Amendment of their Complaint

During our call, you represented that your March 22, 2016 Notice of Intent letter was not sent as a precursor to the initiation of a new law suit, but was instead sent in order to satisfy the procedural prerequisites to filing an Amended Complaint in the existing case. You further represented that the only modification to the existing complaint being contemplated was a clarification of Plaintiffs' remaining cause of action (COA No. 8) to include a claim that the permits issued to Ormat by the GBUAPCD should have included a requirement to install BACT, based on an allegation that the emissions allowed under those permits exceeded 250 pounds per day. Finally, you stated that the proposed amendment would not require a reopening of discovery, but could be pursued based on the existing factual record. Based on these representations, you requested that Ormat consider stipulating to allowing Plaintiffs to file an Amended Complaint, the stipulation to be lodged with the Court as soon as the 60-day deadline under the Notice of Intent letter had expired (May 22, 2016).

2. Timing and Location of Expert Discovery

We discussed the fact that opening expert reports are due on May 6, 2016, and that rebuttal reports are allowed, but that no deadline for those reports is established in the case schedule, only that expert discovery is to be concluded so that the dispositive motion cutoff can be met. I suggested that we consider having rebuttal reports (if any) due approximately three weeks from the production of initial reports, which would make them due approximately May 27, 2016. This deadline has the advantage of being the Friday before Memorial Day, so that the production of rebuttal reports would not extend past the holiday. I also suggested that expert depositions take place during the latter half of June, with the likely locations being somewhere in California, since both of Plaintiffs' experts are located in southern California and Ormat's experts are both located in the Bay Area. You concurred generally with those suggestions, though we will still have to work out the specific details.

3. Agreed Schedule on Dispositive Motions

Finally, we discussed the fact that we are both assuming that the parties will be filing dispositive motions and that it would be advantageous to both the parties and the Court to have them filed

simultaneously, rather than at different times. You initially stated that you anticipated filing in June but I suggested that we wait until after expert discovery had been concluded; you agreed that was a good idea.

Per the existing case schedule, the last day to file dispositive motions is July 14, 2016 (even though the dispositive motion cutoff is September 15, 2016, the Court's only available hearing date before that is September 8, making eight weeks prior to that date July 14, 2016 – eight weeks is the required lead time for dispositive motions under the existing case schedule). If expert depositions take place in June, allowing 2-3 weeks to assimilate the expert deposition testimony in any dispositive motions would generate the following schedule, which I am proposing for your consideration:

July 14, 2016:	Parties file their respective motions for summary judgment
August 4, 2016:	Opposition briefs due and any cross-motions due;
August 18, 2016:	Reply briefs and oppositions to cross-motions due;
September 1, 2016:	Reply briefs on cross-motions (if any) due;
September 8, 2016:	Last day to note dispositive motions for hearing

This schedule complies with the Court's existing case schedule and meets Judge England's schedule for hearing dates in September 2016. I am open to modifications of this schedule, but note that pushing the deadline a week earlier makes the motions due immediately after the July 4 holiday (which falls on Monday this year). I am also open to pushing the deadlines back, but doing so would require a joint petition to the Court to extend the current dispositive motion cutoff in the current case schedule.

Next Steps

1. As I noted during our phone call, I will need to have a proposed Amended Complaint to present to my clients in order to discuss your request for a stipulation. Please prepare a red-line showing any proposed amendments and send that to me at your earliest convenience. I will then talk over the request for a stipulation with our clients and get back to you.

2. Please let me know if you are agreeable to the following dates on expert reports and discovery:

May 6:	Production of Opening Reports (already in the case schedule)
May 27:	Rebuttal Reports (if any) due
June 17:	Expert depositions completed

3. Finally, please let me know if the dispositive motion schedule outlined above is acceptable or if you would prefer to petition the Court for an extension of the dispositive motion cutoff.

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Exhibit D

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

GLOBAL COMMUNITY MONITOR, a California nonprofit corporation; LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION NO. 783, an organized labor union; RANDAL SIPES, JR., an individual; RUSSEL COVINGTON, an individual;

Plaintiffs,

vs.

MAMMOTH PACIFIC, L.P., a California Limited Partnership; ORMAT NEVADA, INC., a Delaware Corporation; ORMAT TECHNOLOGIES, INC., a Delaware Corporation; and DOES I – X, inclusive,

Defendants.

Case No.: 2:14-cv-01612-MCE-KJN

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL PENALTIES

[Clean Air Act, 42 U.S.C. §7604(a)]

GLOBAL COMMUNITY MONITOR ("GCM"); LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION NO. 783 ("LiUNA"); RANDAL SIPES, JR.; and RUSSEL COVINGTON (collectively, "Plaintiffs"), by and through their counsel, hereby allege:

INTRODUCTION

1. This lawsuit seeks to remedy violations of the federal Clean Air Act ("Act") and the Great Basin Unified Air Pollution Control District's ("GBUAPCD" or "Air District") Rule 209-A (Standards for Authorities to Construct) and Rule 209-B (Standards for Permits to Operate) by Defendants MAMMOTH PACIFIC LIMITED PARTNERSHIP (L.P.) ("MPLP"), ORMAT NEVADA, INC. ("Ormat Nevada"), and ORMAT TECHNOLOGIES, INC. ("Ormat Technologies") (collectively, Ormat Technologies, MPLP and Ormat Nevada shall be referred to as "Ormat").

2. Ormat has illegally constructed and operated ~~three~~ four geothermal power plants~~, and proposes to construct and operate a fourth power plant,~~ in Mono County, with a potential to emit 250 pounds per day ("lbs/day") or greater of fugitive emissions of volatile organic compounds ("VOCs") ~~of equal to or over 250 pounds per day ("lbs/day")~~, without complying with Rule 209-A and 209-B. In particular, Ormat has failed to implement best available control technology ("BACT") and emissions offsets at any of its plants to mitigate the plants' excess VOC emissions, as required by Rule 209-A.

3. The Great Basin Unified Air Pollution Control District ("GBUAPCD" or "Air District") is the agency responsible for air quality regulation in the Great Basin Valleys ("GBV") Air Basin, where Ormat's geothermal plants are located. The GBV Air Basin encompasses Mono, Inyo, and Alpine Counties. The Air District has established rules and regulations to reduce the emission of ozone-forming pollutants such as VOCs, including Rule 209-A and Rule 209-B.

4. Rule 209-A prohibits the issuance of an authority to construct ("ATC") permit for any new stationary source or modification to a stationary source that emits 250 pounds per

day ("lbs/day") or more of VOCs unless the facility requires emissions offsets and installs BACT, which is generally defined as the most effective emissions control technique achieved in practice for the category or class of source to which it applies. A facility's approved emissions limitation (potential to emit) is considered the facility's emissions rate for purposes of applying Rule 209-A. Rule 209-A, sect. C.1. In addition, Rule 209-A requires an applicant to certify that all other stationary sources in the State owned by the applicant are in compliance with all applicable emission limitations and standards under the Clean Air Act.

5. Rule 209-B prohibits the issuance of a permit to operate ("PTO") for any new or modified stationary source to which Rule 209-A applies unless the owner or operator of the source has obtained an ATC permit granted pursuant to Rule 209-A, and ensures that all required emissions offsets will be implemented at start-up and maintained throughout the source's operational life. Rule 209-B also prohibits "start-up periods" of over 90 days for simultaneous operation of an existing source with a new or replacement stationary source. Rule 209-B, sect. A.3.

6. Ormat owns and operates ~~the three~~ four existing geothermal power plants, known as the Mammoth Pacific I Geothermal Facility East ("MP-I East") and Mammoth Pacific I Geothermal Facility West ("MP-I West"). (together referred to as MP-I)~~Mammoth Pacific I Geothermal Facility ("MP-I")~~, Mammoth Pacific II Geothermal Facility ("MP-II") and Pacific Lighting Energy Systems Unit I Geothermal Development Project ("PLES-I") (collectively, "Ormat Complex"), and one planned geothermal replacement plant ("M-1")~~ in the Casa Diablo geothermal development complex ("Casa Diablo Geothermal Development"), located two miles east of Mammoth Lakes, California, in the Mono-Long Valley Known Geothermal Resource Area ("KGRA"). The Casa Diablo Geothermal Development is located within the GBV Air Basin~~.[1]

[1] A ~~fourth~~ fifth plant is proposed for the Casa Diablo Complex, Casa Diablo IV, a new 33 MW binary power plant with 16 wells and a pipeline system on Inyo National Forest lands and

7. The plants emit VOCs in the form of fugitive motive fluid emissions of either n-pentane or isobutene through valves, flanges, seals, and other unsealed joints in facility equipment, at levels above the Rule 209-A threshold.

8. Each plant in the Ormat Complex was initially issued an authority to construct ("ATC") permit and a permit to operate ("PTO") authorizing emissions ~~limits~~ of 250 lbs/day each thereby reaching the Rule 209-A threshold. Due to modifications, combining of emissions limits, and changing of names, all four plants have received subsequent ATC and PTO permits as recently as 2013 for MP-I and 2014 for MP-II and PLES-I. Despite the fact that all four plants surpass the Rule 209-A threshold, none of these permits implement BACT or require emissions offsets. Therefore, these facilities continue to operate without permits ~~in compliance with~~required by Rule 209-A ~~or~~and Rule 209-B.

~~8.~~9. Ormat has violated Rule 209-A and Rule 209-B because it applied for, ~~and~~ obtained, and operates under permits authorizing combined emissions limits for MP-I as a single source, and for MP-II and PLES-I as a single source, of 500 lbs/day each of fugitive VOC emissions – double the Rule 209-A threshold – without installing BACT, without obtaining emissions offsets, and without obtaining permits in compliance with Rule 209-A and Rule 209-B. Ormat subsequently modified the MP-I plant in 2013 without complying with Rule 209-A or Rule 209-B.

~~9.~~10. Ormat has further violated Rule 209-A and Rule 209-B by proposing to construct and operate the M-1 replacement plant simultaneously with the MP-I plant for up to two years at a combined VOC emission rate of 705 lbs/day, more than eight (8) times the maximum start-up period allowed by Rule 209-B, and without first obtaining a Rule 209-A permit, installing BACT and obtaining emissions offsets at either plant.

~~10.~~11. Finally, Ormat ~~i~~has violat~~inged~~ Rule 209-A and Rule 209-B by owning and

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adjacent private lands ("CD-IV"). CD-IV has applied for permits from the Air District pursuant to Rule 209-A, but has not yet been ~~approved or~~ constructed.

operating the ~~three~~ four existing geothermal plants ~~for over twenty years~~ – MP-I East, MP-I West, MP-II, and PLES-I – as a single stationary source, without applying for or obtaining an ATC permit pursuant to Rule 209-A, or a PTO permit pursuant to Rule 209-B, for the Ormat Complex as a whole.

~~11.~~12. The four geothermal plants in the Ormat Complex ha~~ve~~s connected operations that meet Rule 209-A's definition for a single stationary source. The Ormat Complex plants are owned and operated by the same company, located on adjacent lands, and dependent upon and affect the process of one another as they share a ~~single~~ common geothermal wellfield ~~of three wells~~, share a common control room, share common pipes which carry geothermal fluid to and from the wellfield, ~~and~~ share other common facilities for economy and operational efficiencies, and even share emissions limits per the terms of their ATCs and PTOs.

~~12.~~13. The permitted VOC emissions of the Ormat Complex total 1000 lbs/day from combined point and fugitive motive fluid emissions. The Ormat Complex thus has the potential to emit 1000 lbs/day of VOCs. Ormat was required to install BACT or obtain emissions offsets for the Ormat Complex pursuant to Rule 209-A. Its failure to do has resulted in ongoing violations of Rule 209-A and 209-B for over twenty years.

~~13.~~14. As a result of each Defendant's unlawful conduct, and failure to install appropriate emissions controls to ~~control~~ reduce the Ormat Complex facilities' fugitive VOC emissions pursuant to Rules 209-A and Rule 209-B, excess amounts of harmful VOC emissions have been and are still being released into the atmosphere every day.

~~14.~~15. Plaintiffs GCM and LiUNA are non-profit organizations whose members live, work and recreate in the direct vicinity of the Ormat Complex. Plaintiffs Randal Sipes, Jr. and Russel Covington are individuals who live, work, and recreate in the direct vicinity of the Ormat Complex and within the air basin affected by Ormat's illegal air pollution. All Plaintiffs are and will continue to be adversely affected by the air pollution from the Ormat Complex at levels far above those permitted by federal law.

JURISDICTION AND PREREQUISITES TO FILING

~~15.~~16. This Court has jurisdiction over this action pursuant to section 304(a) and (c) of the Clean Air Act, 42 U.S.C. §7604(a) and (c), and pursuant to federal question jurisdiction under 28 U.S.C. §1331.

17. On May 7, 2014, Plaintiffs gave notice of Ormat's Clean Air Act violations and Plaintiffs' intent to file suit by mailing a Notice of Intent to Sue letter ("NOI") to Ormat, to the Administrator of the United States Environmental Protection Agency ("EPA"), to the Regional Administrator of EPA Region IX, and to the State of California, as required by §304(b) of the Act, 42 U.S.C. § 7604(b). The NOI informed Ormat that Plaintiffs intended to sue Ormat unless it came into compliance with the Clean Air Act within sixty (60) days. A true and correct copy of the NOI is attached hereto as Exhibit A.

18. On May 22, 2016, Plaintiffs gave notice of Ormat's additional Clean Air Act violations and Plaintiffs' intent to amend its complaint to include a new cause of action by mailing a Notice of Intent to Sue letter ("NOI") to Ormat, to the Administrator of the United States Environmental Protection Agency ("EPA"), to the Regional Administrator of EPA Region IX, and to the State of California, as required by §304(b) of the Act, 42 U.S.C. § 7604(b). The NOI informed Ormat that Plaintiffs intended to sue Ormat unless it came into compliance with the Clean Air Act within sixty (60) days. A true and correct copy of the NOI is attached hereto as Exhibit B.

~~16.~~

~~17.~~19. More than 60 days have passed since service of the notices described in the previous paragraph. Ormat remains in violation of the Clean Air Act. Neither EPA, the state, nor the Air District have commenced, nor are diligently prosecuting, a civil action in a court of the United States or any state to require compliance with the federal Clean Air Act requirements pursuant to 42 U.S.C. § 7604(b)(1)(B).

~~18.~~20. Ormat did not come into compliance with Rule 209-A or Rule 209-B during the 60-day period, and did not meaningfully respond to the NOI with any evidence to support a basis to withdraw the NOI. ~~While~~ In response to Plaintiffs' first notice letter, Ormat's counsel

expressed a desire to meet with Plaintiffs. Orma~~,~~ it proposed to meet *after* the expiration of the 60-day notice period, not before. In response to Plaintiffs' second notice letter, Ormat's Counsel and Plaintiff agreed to file a stipulation to allow Plaintiffs leave to amend its complaint to include the additional cause of action.

~~19.~~21. This suit seeks declaratory and injunctive relief, civil penalties, and an award of the costs of this litigation against Ormat to ensure that Ormat fully complies with the requirements of the Clean Air Act.

~~20.~~22. Ormat has violated, and continues to violate Rules 209-A and Rule 209-B by constructing and operating the existing Ormat Complex facilities without requisite Rule 209-A and Rule 209-B permits and without complying with Rule 209-A and 209-B's requirements. Ormat has violated, and continues to violate Rule 209-A and 209-B by proposing to construct and operate the M-1 facility without complying with the requirements of Rule 209-A and Rule 209-B. Rule 209-A and Rule 209-B have been approved by the U.S. Environmental Protection Agency ("EPA") as part of the State Implementation Plan ("SIP"). Pursuant to § 304(a)(1) of the Clean Air Act, 42 U.S.C. § 7604(a)(1), Plaintiffs may enforce the State Implementation Plan.

VENUE

~~21.~~23. Venue is proper in the Sacramento Division of the of the Eastern District of California pursuant to section 304 of the Act, 42 U.S.C. § 7604, and 28 U.S.C. §§ 1391(b), (c), and (e) because a substantial part of the events or omissions giving rise to the claim occurred in the County of Mono ("Mono County"), MPLP either resides or has its principal place(s) of business in this District, and the facilities that are the subject of this Complaint are located within Mono County.

PARTIES

~~22.~~24. Plaintiff GLOBAL COMMUNITY MONITOR ("GCM") is a non-profit corporation organized under California's Corporations Law. GCM, founded in 2001, trains and supports communities in the use of environmental monitoring tools to understand the impact of

air pollution and toxic chemical releases on their health and the environment. GCM is dedicated to, among other causes, reducing the levels of unhealthful air pollution to which its members and members of the public are exposed. GCM works through its members to empower local communities to demand their right to clean air by training its members to identify sources of illegal pollution, working with industrial neighbors to reduce facility air emissions, and by enforcing state and federal air quality laws.

~~23.~~25. GCM has members who live, work, and recreate in Mono and Inyo counties, including in the direct vicinity of the Town of Mammoth Lakes and the Ormat Complex. Members of GCM regularly breathe the excessively polluted air of the Great Basin Valleys ("GBV") Air Basin and have a direct interest in the outcome of this action. These members are regularly exposed to the localized and regional air pollution caused by Ormat's illegal construction and operation of its geothermal power plants in violation of federal law, including but not limited to GCM member Randal Sipes, Jr. Members of GCM have suffered, and will continue to suffer, injury in fact as a result of the violations of law at issue in this action, including but not limited to, being forced to breathe heavily polluted air at levels substantially higher than those allowed by federal law.

~~24.~~26. Plaintiff LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION NO. 783 ("LiUNA") is a non-profit laborers' and public service employees' union. LiUNA advocates to assure its members access to a safe and healthful environment, both on and off the job, including advocating for policies and changes in development projects that reduce air pollution. LiUNA has members in or near Mono County and the adjoining Inyo County. LiUNA has members who live, work, and recreate in Mono and Inyo counties, including in the direct vicinity of the Town of Mammoth Lakes and the Ormat Complex, including but not limited to Mr. Sipes and Mr. Covington.

~~25.~~27. LiUNA and its members in Mono and Inyo Counties have several distinct legally cognizable interests in this project. LiUNA members regularly travel to the Mammoth Lakes area of Mono County to work and recreate. LiUNA members are presently, and will continue to

be, exposed to degraded air quality and other risks related to construction and operation of the Ormat Complex facilities that have not been adequately analyzed or mitigated. The interests of LiUNA members are unique and will be directly impacted by the project. LiUNA's interests are not adequately represented by other parties.

~~26.~~28. The interests of LiUNA's members that are at stake in this action are germane to LiUNA's organizational purpose. LiUNA's Local Union Constitution charges LiUNA with the responsibility to enhance, preserve and protect the welfare and interest of its members. LiUNA's Statement of Organizational Purpose states in pertinent part:

~~##~~

> LIUNA Local Union No. 783 hereby commits to the following organizational purposes on behalf of its members:
> • To protect recreational opportunities for its members to improve its members quality of life when off the job;
> • To assure our members access to safe, healthful, productive, and esthetically and culturally pleasing surroundings both on and off the job;
> • To promote environmentally sustainable businesses and development projects on behalf of its members, including providing comments raising environmental concerns and benefits on proposed development projects;
> • To advocate for changes to proposed development projects that will help to achieve a balance between employment, the human population, and resource use which will permit high standards of living and a wide sharing of life's amenities by its members as well as the general public;
> • To take steps to preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;
> • To advocate on behalf of its members for programs, policies, and development projects that promote not only good jobs but also a healthy natural environment and working environment, including but not limited to advocating for changes to proposed projects and policies that, if adopted, would reduce air, soil and water pollution, minimize harm to wildlife, conserve wild places, reduce traffic congestion, reduce global warming impacts, and assure compliance with applicable land use ordinances; and
> • To work to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.

LiUNA's interests in effectuating this organizational purpose is are not adequately represented by other parties.

~~27.~~29. Plaintiff RANDAL SIPES, JR. is a GCM member and a LiUNA member who

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resides in Bishop, California, approximately forty (40) miles from the Ormat Complex. Mr. Sipes lives, works, and recreates near the Ormat Complex and within the GBV Air Basin, where he regularly breathes the air. Mr. Sipes grew up in Bishop, California, within the GBV Air Basin, and has lived there for most of his life. He frequently works on construction and road projects in and around Inyo and Mono Counties, including within a few miles of the Town of Mammoth Lakes in the vicinity of the Ormat Complex.

~~28.~~30. Mr. Sipes regularly recreates in the Mammoth Lakes area. He hikes on trails around the Mammoth Lakes area with friends and family as often as twice per week at certain times of year, fishes at nearby Lake Mary, Twin Lakes, and Grant Lake on weekends, and snowboards during the winter months at nearby Mammoth Mountain. Mr. Sipes is and will continue to be directly and adversely affected by air pollution from the Ormat Complex. Mr. Sipes breathers the air during these activities, and suffers and will continue to suffer injury in fact as a result of the violations of law related to the Ormat Complex at issue in this action, including but not limited to being forced to breathe heavily polluted air at levels substantially higher than those allowed by federal law.

~~29.~~31. Plaintiff RUSSEL COVINGTON is a LiUNA member who resides on a Paiute reservation about three (3) miles outside of the town of Bishop, California, approximately forty-three (43) miles from the Ormat Complex, within the GBV Air Basin. Mr. Covington lives with his wife, Balery Covington, and has a brother and sister-in-law who live in Bishop. Mr. Covington and the members of his family regularly breathe the air in the GBV Air Basin that is polluted by excess air emissions from Ormat's operations at the Ormat Complex at levels substantially higher than those allowed by federal law.

~~30.~~32. Mr. Covington frequently visits the Mammoth Lakes area in Mono County in the direct vicinity of the Ormat Complex. Mr. Covington travels to Mammoth Lakes a few times a year, usually with his wife, to visit the town and shops, where they regularly breathe the air. Mammoth Lakes is about a forty to forty-five (40-45) minute drive from Mr. Covington's residence. Mr. Covington is and will continue to be directly and adversely affected by air

pollution from the Ormat Complex. Mr. Covington suffers and will continue to suffer injury in fact as a result of the violations of law related to the Ormat Complex at issue in this action, including, but not limited to, being forced to breathe heavily polluted air at levels substantially higher than those allowed by federal law.

~~31.~~33. Plaintiffs are persons within the meaning of section 302(e) of the Act, 42 U.S.C. § 7602(e), and may commence a civil action under section 304(a) of the Act, 42 U.S.C. § 7604(a).

~~32.~~34. Defendant MAMMOTH PACIFIC LIMITED PARTNERSHIP (L.P.) ("MPLP") is a California limited partnership with its principal place of business in Mammoth Lakes, California. MPLP is an owner and operator of the existing Ormat Complex, including the MP-I, MP-II, and PLES-I plants. MPLP has applied for and obtained land use permits from Mono County to construct the M-1 replacement plant. As the owner, operator, and applicant for the existing and proposed Ormat Complex facilities, MPLP is responsible for applying for all necessary permits and approvals required for the Ormat Complex, including ATC, PTOs, and other air emission permits. MPLP is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. §7602(e).

~~33.~~35. Defendant ORMAT NEVADA, INC. ("Ormat Nevada") is a Delaware Corporation with its principal place of business in Reno, Nevada. Ormat Nevada is an owner and operator of the existing Ormat Complex, including the MP-I, MP-II, and PLES-I plants. Ormat Nevada is the parent company of MPLP, and a wholly owned subsidiary of Ormat Technologies, Inc. Ormat Nevada is the owner in fee of the land on which the M-1 replacement plant will be constructed, and is the recipient of land use approvals from Mono County to construct M-1. As the owner, operator, and applicant for the existing and proposed Ormat Complex facilities, Ormat Nevada is responsible for applying for all necessary permits and approvals required for the Ormat Complex, including ATC, PTOs, and other air emission permits. Ormat Nevada is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. §7602(e).

~~34.~~36. Defendant ORMAT TECHNOLOGIES, INC. ("Ormat Technologies") is a Delaware Corporation with its principal place of business in Reno, Nevada. Ormat Technologies is an owner and operator of the existing Ormat Complex, including the MP-I, MP-II, and PLES-I plants. Plaintiffs are informed and believe that Ormat Technologies is the parent company of MPLP. Ormat Technologies is the owner in fee of the land on which the M-1 replacement facility will be constructed, and is the recipient of land use approvals from Mono County to construct M-1. As the owner, operator, and applicant for the existing and proposed Ormat Complex facilities, Ormat Technologies is responsible for applying for all necessary permits and approvals required for the Ormat Complex, including ATC, PTOs, and other air emission permits. Ormat Technologies is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. §7602(e).

~~35.~~37. Plaintiffs do not know the true names or capacities of the persons or entities sued as Respondents DOES I through X, inclusive, and therefore sue these defendants by their fictitious names. Plaintiffs will amend the Complaint to set forth the names and capacities of the Doe defendants along with appropriate charging allegations when such information has been ascertained.

~~36.~~38. As a result of Ormat's failure to comply with Rule 209-A and Rule 209-B, Plaintiffs and their members are being and will be exposed to harmful air pollution that will cause acute and chronic respiratory health impacts. This pollution would be controlled if Ormat were required to comply with the Clean Air Act. An injunction from this Court requiring Ormat to comply with GBUAPCD Rule 209-A and Rule 209-B will help to remedy the harm faced by Plaintiffs and their members.

~~37.~~39. Ormat is subject to the assessment of civil penalties for its violations of the Clean Air Act pursuant to Clean Air Act §304(a), 42 U.S.C. §7604(a). An assessment of civil penalties would help remedy Defendants' past and present violations of the Clean Air Act, would help remove the economic benefit of non-compliance, would have a punitive and retributive effect on Defendants, and would have a general and specific deterrent effect in

preventing future violations by Ormat and other major sources of pollution.

~~38.~~40. This lawsuit seeks civil penalties against Ormat in each cause of action under the Clean Air Act, up to and including $37,500 per day, per violation.

~~39.~~41. Section 304(g) of the federal Clean Air Act authorizes the award of $100,000 for beneficial mitigation projects to enhance the public health or environment. Such an award would mitigate, to some extent, the harm to Plaintiffs' members living, working, and recreating near the Project caused by Defendants' ongoing violations of the Clean Air Act.

~~40.~~42. When, in this Complaint, reference is made to any act of Ormat, such reference shall be deemed to include the officers, directors, agents, employees, or representatives of Ormat who committed or authorized such acts, or failed and omitted adequately to supervise or properly to control or direct their employees while engaged in the management, direction, operation, or control of the affairs of Ormat, and did so while acting within the course and scope of their employment or agency.

LEGAL BACKGROUND

~~41.~~43. The Clean Air Act ("Act" or "CAA"), 42 USC § 7401 et seq., sets out a comprehensive regulatory scheme designed to prevent and control air pollution. The Act establishes ambient air quality standards and permit requirements for both stationary and mobile sources. Congress passed the Clean Air Act in order to prevent air pollution and to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare. 42 U.S.C. §7401.

~~42.~~44. The Act directs the EPA to prescribe national ambient air quality standards ("NAAQS") at a level sufficient to protect the public health and welfare. 42 U.S.C. §7409(a) and (b).

~~43.~~45. Each state is required to develop a "state implementation plan" ("SIP") to achieve the NAAQS established by the EPA. 42 U.S.C. §7410(a). If U.S. EPA approves a SIP, or any rules into the SIP, its requirements become federal law and are fully enforceable in federal court by the local agency, EPA, or "any person."

44.46. Section 304(a) of the Clean Air Act, 42 U.S.C § 7604(a), authorizes any person to commence a civil action on his own behalf against any person, "who is alleged to have violated (if there is evidence that alleged violation has been repeated) or to be in violation of (A) an emission standard or limitation under this chapter."

45.47. The Clean Air Act, 42 U.S.C §§ 7604(f)(1),(3), and (4), broadly defines the term "emission standard or limitation" to mean:

> (1) "a schedule or timetable of compliance, emission limitation, standard of performance or emission standard" or
> (3) "any condition or requirement under an applicable implementation plan relating to…air quality maintenance plans… any condition or requirement under Title VI [42 USCS §§ 7671 et seq.] (relating to ozone protection), or any requirement under section 111 or 112 [42 USCS §§ 7411, 7412] (without regard to whether such requirement is expressed as an emission standard or otherwise)" or
> (4) "any other standard, limitation, or schedule established under any permit issued pursuant to title V [42 USCS §§ 7661 et seq.] or under any applicable State implementation plan approved by the Administrator, any permit term or condition, and any requirement to obtain a permit as a condition of operations" which is in effect under this chapter or under an applicable implementation plan."

46.48. The Clean Air Act requires the states to adopt, as part of their SIPs, "enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act." 42 USCS § 7410(a)(2).

47.49. The Clean Air Act authorizes local air districts to adopt appropriate air quality measures to achieve and maintain the NAAQS. *See, e.g.*, Sections 113(b)(1), 304(a)(2) and 304(f) of the Act, 42 U.S.C. §§ 7413(b)(1), 7604(a)(2) & (f); *Her Majesty the Queen v. Detroit*, 874 F.2d 332, 335 (6th Cir. 1989); *American Lung Ass'n v. Kean*, 871 F.2d 319, 322 (3d Cir. 1989); *United States v. Congoleum Corp.*, 635 F. Supp. 174, 177 (E.D. Pa. 1986). Once an Air District Regulation is approved by EPA into California's SIP, it becomes an enforceable "emission standard or limitation" as defined by 42 U.S.C §7604(f)(1), (3), and (4).

48.50. The Air District is the local governmental air quality control agency charged

under the California Clean Air Act with promulgating rules and regulations to reduce air pollution in the GBV Air Basin. The Air District's jurisdiction includes the three counties that make up the air basin – Inyo, Mono, and Alpine Counties. The Air District maintains its office in Bishop, California.

~~49.~~51. The Air District promulgated Rule 209-A (Standards for Authorities to Construct) and Rule 209-B (Standards for Permits to Operate). Rule 209-A and Rule 209-B were adopted by GBUAPCD on or about August 20, 1979. Both rules were federally approved by the EPA as part of California's SIP on or about June 18, 1982. 47 Fed. Reg. 26380 (June 18, 1982). Thus, Rule 209-A and Rule 209-B are part of the Clean Air Act, and have been federally enforceable by citizen suit on all dates relevant to this matter. 42 U.S.C. §§ 7413(b)(1), 7604(a)(2) & (f); *Her Majesty the Queen v. Detroit*, 874 F.2d 332, 335 (6th Cir. 1989).

~~50.~~52. By committing the violations of Rule 209-A and Rule 209-B, Ormat has violated the Clean Air Act §304(a), 42 U.S.C. §7604(a), by violating an "emission standard or limitation" as defined by 42 U.S.C §7604(f)(1), (3), and (4).

~~51.~~53. Rule 209-A is designed to control air pollution emitted from stationary sources by requiring new stationary sources and modifications to existing stationary sources to install BACT and require emissions offsets where construction and operation of the sources will result in a net increase in emissions of 250 or more lbs/day of any pollutant for which there is a NAAQS. Rule 209-A, set. A.1. A facility's approved emissions limitation (potential to emit) is considered the facility's emissions rate for purposes of applying Rule 209-A. Rule 209-A, sect. C.1.

~~52.~~54. Ozone is an applicable NAAQS for application of Rule 209-A and Rule 209-B. The GBV Air Basin is classified as a State designated nonattainment area for ozone. 17 Cal. Code Regs ("CCR") § 60201. VOCs, which are emitted during Ormat's operations, are precursors to ozone formation in the atmosphere, and are therefore regulated under Rule 209-A and Rule 209-B. VOCs are regional air pollutants that adversely affect ozone concentrations throughout the air basin – not only in the area near the source.

~~53.~~55. Rule 209-A defines "Stationary Source" as "any aggregation of air-contaminant-emitting equipment which includes any structure, building, facility, equipment, installation or operation (or aggregation thereof) which is located on one or more bordering properties within the District and which is owned, operated, or under shared entitlement to use by the same person." Rule 209-A, set. F.3. Under Rule 209-A, items of air-contaminant-emitting equipment are considered aggregated into the same stationary source, and items of non-air-contaminant-emitting equipment are considered associated with air-contaminant-emitting equipment where the operation of each item of equipment is dependent upon, or affects the process of, the other; and the operation of all such items of equipment involves a common raw material or product. *Id.*

~~##~~

~~54.~~56. BACT is defined as the more stringent of:

a. The most effective emissions control technique which has been achieved in practice, for such category or class of source; or
b. Any other emissions control technique found, after public hearing, by the Air Pollution Control Officer or the Air Resources Board to be technologically feasible and cost/effective for such class or category of sources or for a specific source; or
c. The most effective emission limitation which the EPA certifies is contained in the implementation plan of any State approved under the Clean Air Act for such class or category or source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable. Rule 209-A, sect. F.1.

~~55.~~57. Rule 209-B prohibits the issuance of a permit to operate for any new or modified stationary source or any portion thereof to which Rule 209-A applies unless the owner or operator of the source has obtained an ATC granted pursuant to Rule 209-A, and the Air Pollution Control Officer ("APCO") confirms that any offsets required as a condition of a Rule 209-A ATC will commence at the time of or prior to initial operations of the new source or modification, and will be maintained throughout the operation of the new or modified source.

~~56.~~58. Rule 209-B allows a maximum of 90 days as a start-up period for simultaneous operation of an existing stationary source and a new stationary source or replacement. Rule 209-B, sect. A.3.

FACTUAL ALLEGATIONS

Facility Background

~~57.~~59. The ~~Casa Diablo Geothermal Development~~ Ormat Complex consists of ~~three~~ four existing geothermal plants – MP-I East and MP-I West, ~~a 14~~ each of which are 5 megawatt ("MW") facilities~~y which commenced operation in~~ (collectively known as MP-I)~~1984~~; MP-II, also known as "G2," a 15 MW facility ~~that commenced operations in 1990~~; and PLES-I, also known as "G3," another 15 MW facilityies ~~which commenced operations in 1990~~ (collectively, MP-I, MP-II, and PLES-I are referred to as the "Ormat Complex").

A. Fugitive Emissions.

~~58.~~60. The facilities emit VOCs in the form of fugitive motive fluid emissions of either n-pentane or isobutene, through valves, flanges, seals, and other unsealed joints in facility equipment. Both isobutane and n-pentane are considered reactive organic gases ("ROGs") and VOCs (collectively, "VOCs") under respective state and federal air regulations. VOCs combine with nitrogen oxides ("NOx") to form ozone in the atmosphere. Ozone is a criteria air pollutant for which there is a NAAQS. VOCs are regulated as ozone precursors under Rule 209-A and Rule 209-B.

~~59.~~61. According to EPA, breathing ground-level ozone can result in a number of health effects that are observed in broad segments of the population, including ~~induction of~~ respiratory symptoms, ~~decrements in~~decreased lung function, and inflammation of airways. Respiratory symptoms can include coughing, throat irritation, pain, burning, or discomfort in the chest when taking a deep breath, and chest tightness, wheezing, or shortness of breath. Breathing high daily concentrations of ozone is also associated with increased asthma attacks, increased hospital admissions, increased daily mortality, and other markers of morbidity. See http://www.epa.gov/apti/ozonehealth/population.html.

B. Mammoth Pacific I Geothermal Facility.

~~60.~~62. MP-I was the first geothermal ~~plant~~ facility at the Ormat Complex, commencing operation in 1984. It includes ~~a 14~~ two 5 megawatt ("MW") binary power plants

which dra~~w~~ws geothermal fluid from the shared geothermal wellfield, as well as production and injection fluid pipelines, and ancillary facilities. MP-I is located on private land owned by Ormat Nevada.

~~61.~~63. The MP-I facility consists of two units – MP-I West and MP-I East. As a whole, the existing MP-I facility has potential to emit VOCs ~~at a rate of approximately~~ at a rate of 500 lbs/day ~~(91.3 tons/year). The MP-I facility has been operating at about half of its permitted capacity since at least 2010.~~

~~62.~~64. The Air District issued the original PTOs for the MP-I facility on or around May 16, 1988. MP-I was originally permitted by GBUAPCD as two facilities under two separate PTOs. PTO No. 325 was issued on May 16, 1988 for MP-I West (aka "G1 unit 100"), a 5 MW~~e~~ power plant. PTO No. 328 was issued on May 16, 1988 for MP-I East (aka "G1 unit 200"), a 5 MW~~e~~ power plant. On or around October 2, 1991, a single permit to operate was issued for the combined MP-I facility, PTO No. 601.

~~63.~~65. On or around June 24, 2009, the Air District approved Ormat's proposal to combine allowable emissions of the MP-I units and issued ATCs and PTOs 601-03-09 for MP-I West and 602-03-09 for MP-I West. ~~On or around February 8, 2010, GBUAPCD issued PTOs Nos. 602-03-09 and 601-03-09, which approved a combined emissions limit for MP-I East and MP-I West of 500 lbs/day total VOC emissions, and changed the names of the facilities.~~ MP-I West was renamed "G1 unit 100," and MP-~~I~~ I East was renamed "G1 unit 200."

~~64.~~66. The combined emissions limit resulted in an emission level of 500 lbs/day of VOCs from the single MP-I facility, double ~~in excess of~~ 250 lbs/day of VOCs. This emission level required MP-I to implement BACT and require emissions offsets pursuant to Rule 209-A.

~~65.~~67. Ormat failed to apply for or obtain an ATC permit pursuant to Rule 209-A. On or around May 1, 2013, GBUAPCD issued ATC Permit Nos. 601-04-13 and 602-04-73, which authorized facility equipment replacements to upgrade turbines and condensers, and approved a change in motive fluid. None of these permits implement BACT for MP-I. The MP-I air permits similarly do not treat the Ormat Complex as a single stationary source, and fail to

require compliance with GBUAPCD Rules 209-A and 209-B for the Ormat Complex as a single source.

C. M-1.

~~66.~~68. In November 2012, Mono County approved land use permits for the M-1 replacement plant, which will generate 18.8 MW of electricity, and will replace the 14 MW MP-I. During M-1's 30-year operations, the M-I plant will emit at least 205 lbs/day of VOCs in the form of fugitive n-pentane emissions, an ozone precursor, through valves, flanges, seals, and other unsealed joints in facility equipment. Ormat allowed the ATC for M-1 to expire on May 19, 2016, but does not intend to abandon the project. - During the two-year startup phase, M-1 and MP-I will operate simultaneously, resulting in combined net fugitive VOC emissions of approximately 705 lbs/day (MP-I's 500 lbs/day plus M-1's 205 lbs/day).

D. Mammoth Pacific II Geothermal Facility.

~~67.~~69. The MP–II facility is also located on Ormat's private lands, just 1,200 feet east–northeast of the MP–I facility and directly adjacent to it. MP-II shares production and injection well fields with MP-I, such that geothermal fluid produced from the production wells can be conveyed to either of the two plants, and spent (cooled) geothermal fluid discharged from either of the two plants is injected into any of the available injection wells. MP-II operates under a Conditional Use Permit ("CUP") from the County.

~~68.~~70. On or around July 26, 1988, GBUAPCD issued the original ATCs for the MP-II facility, ATC Nos. 329 and 583. The original PTO for MP-II was issued in 1991.

E. PLES-I Geothermal Development Project.

~~69.~~71. PLES–I is a power plant which is a "twin" to the MP–II facility. PLES-I and its associated geothermal production and injection wells are located on adjacent public lands administered by the U.S. Forest Service. MP-II and PLES-I were permitted simultaneously by the Air District, but were issued separate permits.

~~70.~~72. In 1989, GBUAPCD issued the original ATCs for PLES-I, ATCs Nos. 279 and 575. The original PTO for PLES-I was issued in 1991. On or around June 24, 2009~~February 8,~~

~~2010~~, GBUAPCD issued PTOs Nos. 583-03-09 (MP-II) and 575-03-09 (PLES-I), approving a combined emissions limit for MP-II and PLES-I of 500 lbs/day total VOC emissions from combined point and fugitive isobutene emissions.

~~71.~~73. Neither PLES-I nor MP-II have applied for ~~n~~or installed BACT.

F. Connected Operations.

~~72.~~74. Ormat owns and operates the ~~three~~ four existing geothermal facilities – MP-I (East and West), MP-II, and PLES-I – as a single source. The operation of the equipment of all ~~three~~ four facilities is dependent upon and affects the process of the other facilities' equipment. The operation of all ~~three~~ four facilities relies on the same raw geothermal material extracted from, and injected into, the same underlying resource. MP-I, MP-II, and PLES-I rely on the same production wells and same underlying water resources, ~~use~~ are operated from a single control room and other shared facilities, have connected pipelines, have the same contract limitations on collective power production, have a single reclamation plan, and are operated by the same company, Ormat. Electricity generated at MP-II powers the production wells for MP-I. The ~~three~~four facilities also fall under the same industrial grouping – SIC Code 4911 (Electric Services), and NAICS Code 221119 (Other Electric Power Generation).

~~73.~~75. The existing production and injection wells of the MPLP Ormat Complex are operated as a single system. Hot geothermal fluid from the production wells are routed to one or more of the existing power plants, where heat is extracted by the binary process, then the cooled fluid is injected into one or more of the injection wells. The four~~three~~ facilities share a single combined physical pumping capacity of about 6,900,000 pounds per hour ("pph"). This physical pumping limit will not change with the M-I replacement plant. Any increase in flow to the new M-1 plant over the existing flow to the MP-I plant must be offset by directly corresponding reductions in flow to the MP-II and/or PLES-I facilities.

~~74.~~76. The facilities have a shared pipeline system. The existing Ormat Complex pipeline system will deliver the geothermal fluid to and from the new M–1 plant site. The existing production pipeline system passes immediately south of the proposed M–1 plant site.

The proposed M–I OEC unit would be connected to the existing Ormat Complex pipelines via new, above ground, production and injection fluid interconnection pipelines. Finally, the isobutene used at the new M-1 facility will be transferred to either the MP–II or PLES–I plant sites as makeup motive fluid for those facilities.

~~75.~~77. Ormat has constructed and operated the existing MP-I, MP-II, and PLES-I plants without installing BACT or requiring emissions offsets for the facilities, in violation of Rule 209-A and Rule 209-B. Ormat has also proposed to construct and operate the M-1 plant simultaneously with MP-I for two years without installing BACT or requiring emissions offsets for the facilities, in violation of Rule 209-A and Rule 209-B.

~~76.~~78. As a result of Ormat's illegal construction, modification, and operation of the Ormat Complex plants and proposed M-1 plant without complying with the federal Clean Air Act Rule 209-A and Rule 209-B, Plaintiffs are presently being exposed to air pollution at levels far above levels allowed by the Clean Air Act.

~~77.~~79. Every day since approximately January 1, 1989 that Ormat has failed to install BACT and require emissions offsets at the Ormat Complex in violation of Rule 209-A and Rule 209-B is a separate and distinct violation of the Clean Air Act, subject to penalties and injunctive relief under the Act. Each additional violation of Rule 209-A and Rule 209-B identified below is also a separate and distinct violation of the Clean Air Act, subject to penalties and injunctive relief under the Act. Plaintiffs intend to seek the maximum penalties and injunctive relief allowed by law for each and every day for the entire statute of limitations period from July 8, 2009 through the present and through the date that Ormat comes into compliance with the Clean Air Act.

~~78.~~80. Unless this Court enjoins Ormat's operations, Plaintiffs, and members of the Plaintiff organizations, will continue to be exposed to unlawful levels of air pollution from Ormat's geothermal plants at approximately twice the level allowed by federal law.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

~~**Clean Air Act, 42 U.S.C. §7604(a) - Violation of Rule 209-A**~~
~~**(Proposing to Modify, and Modifying, MP-I Without Complying With Rule 209-A)**~~
~~**Declaratory and Injunctive Relief, Civil Penalties**~~
~~***By All Plaintiffs Against All Defendants***~~

~~79. All of the above paragraphs are incorporated herein by reference as if set forth again in full.~~

~~80. MP-I is a stationary source as defined by Rule 209-A, sect. F.3. MP-I has a combined, permitted emissions limit of 500 lbs/day total VOC emissions, and is therefore subject to Rule 209-A's BACT and emissions offset requirements.~~

~~81. On or around May 1, 2013, Ormat applied for, and GBUAPCD issued, ATC Permit Nos. 601-04-13 and 602-04-73, which authorized "modification" of MP-I facility equipment to upgrade facility turbines and condensers, and approved a change in motive fluid.~~

~~82. MP-I was subject to Rule 209-A at the time Ormat applied for and obtained the modification permits.~~

~~83. Rule 209-A defines "modification" as "any physical change in, change in method of operation of, or addition to an existing stationary source, except that routine maintenance or repair shall not be considered to be a physical change." Rule 209-A, sect. F.2. Changes that are not considered a "modification" under Rule 209-A include increases in production rate (provided the increase does not exceed the operating design capacity of the source), increase in the hours of operation, and change in ownership of the source. *Id.*~~

~~84. The activities approved ATC Permit Nos. 601-04-13 and 602-04-73 constituted a stationary source modification within the meaning of Rule 209-A and the federal Clean Air Act.~~

~~85. Ormat thereafter constructed the modifications, and began operating MP-I as modified stationary source within the meaning of Rule 209-A and the federal Clean Air Act.~~

~~86. Ormat failed to comply with Rule 209-A by failing to install BACT at the MP-I facility, failing to require emissions offsets, and failing to obtain an ATC permit in compliance with the requirements of Rule 209-A prior to constructing the modifications.~~

~~87. Ormat further violated Rule 209-A by applying for and obtaining permits to modify~~

~~MP-I while it owned and operated other stationary sources within California which were out of compliance with applicable Clean Air Act and SIP emission limitations and standards. Rule 209-A, sect. A.2. At the time Ormat applied for and obtained ATC Permit Nos. 601-04-13 and 602-04-73, Ormat was simultaneously operating MP-II and PLES-I as a single stationary source with a combined VOC emissions limit of 500 lbs/day without installing BACT or requiring emissions offsets for MP-II and PLES-I. Ormat was also operating the Ormat Complex as a single stationary source without installing BACT or complying wiht with other Rule 209-A requirements.~~

~~88. Because Ormat modified MP-I, and has commenced operation of the modified MP-I plant, without applying to GBUAPCD for an ATC that requires installation of BACT, purchase of emission offsets, or otherwise complies with all other Rule 209-A requirements, Ormat has violated and continues to violate the Clean Air Act. This violation has been ongoing since at least May 1, 2013, and every day thereafter through the present.~~

~~89. Ormat's violations of Rule 209-A are a violation of an emission standard or limitation, within the meaning of the Clean Air Act, and a violation of the Act's new source review performance standards. 42 U.S.C. §7411(e). The violations are ongoing, and will continue unless remedied by an order from the Court.~~

~~90. Each day that Ormat fails to comply with Rule 209-A is a separate violation of the Act. Each day that Ormat modified MP-I without complying with Rule 209-A is a separate violation of the Act. Each day that Ormat operates MP-I without comply with Rule 209-A is a separate violation of the Act. Each violation and each day of violation constitutes a separate violation subject to penalties, injunctive and declaratory relief.~~

~~SECOND CAUSE OF ACTION~~

Clean Air Act, 42 U.S.C. §7604(a) - Violation of Rule 209-A
(Proposing to Operate, and Operating, MP-I Above Rule 209-A Emissions Threshold Without Complying With Rule 209-A and Without Authority to Construct Permit)
Declaratory and Injunctive Relief, Civil Penalties
By All Plaintiffs Against All Defendants

~~91.~~81. All of the above paragraphs are incorporated herein by reference as if set forth

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again in full.

~~92.~~82. MP-I is owned and operated by Ormat as a stationary source within the meaning of Rule 209-A and the federal Clean Air Act, and has a ~~combined~~ VOC emissions limit above the Rule 209-A BACT threshold.

~~93. Ormat failed to apply for or obtain a Rule 209-A ATC permit for MP-I prior to commencing MP-I operations under the combined emissions limit, in violation of Rule 209-A.~~

~~94.~~83. MP-I~~1~~ East and MP-I~~1~~ West were originally permitted in 1987 and 1988 respectively as two separate facilities, each with maximum permitted emissions of 250 lbs/day. On or around February 8, 2010, Ormat applied for and obtained ~~PTOs~~ ATCs Nos. 602-03-09 and 601-03-09 from GBUAPCD, which approved a combined VOC emissions limit of 500 lbs/day for MP-I. The MP-I facility has a potential to emit VOCs at a rate of 500 lbs/day.

~~95.~~84. Under Rule 209-A, a permit for a new or modified source must be denied if it results in a~~n~~ net increase in emissions of VOCs of 250 or more lbs/day unless BACT and emissions offsets are required. Rule 209-A, sect. B.2.a.- The approved emissions limitation (potential to emit) is considered the facility's emissions rate for this purpose. Rule 209-A, sect. C.1.

~~96.~~85. The current permit allows either MP-I East or MP-I West to operate at 500 lbs/day. Since it is a combined permit, if one unit were to operate at the full limit of 500 lbs/day, the other would have to cease operating on that day. However, the permit for the first time allows either unit to increase its potential to emit from 250 lbs/day to over 500 lbs/day – an increase of 250 lbs/day. At 500 lbs/day, MP-I's combined emissions limit is double the Rule 209-A threshold for requiring both BACT and offsets. Because either MP-I East or West could operate at a net emissions increase of 250 lbs/day, BACT and offsetting requirements were triggered for both units under Rule 209-A. ~~Therefore, Rule 209-A compliance was required for MP-I from the time Ormat applied for permits with the combined emissions limit.~~

~~97.~~86. Ormat failed to obtain an ATC permit pursuant to Rule 209-A for the either MP-I East of MP-I West ~~facility~~ prior to commencing operations under the combined emissions

limit, and has failed to install BACT or obtain required emission offsets at either MP-I source. Ormat is currently operating the MP-I East and Westplant with a potential to emit of 500 lbs/day each, without installing BACT or obtaining emissions offsets. Thus, Ormat has violated the Clean Air Act. Ormat's operations have resulted, and threaten to further result, in emissions above levels allowed by federal law, including VOCs, precursors to the criteria air pollutant ozone.

98.87. Because Ormat obtained permits and commenced operation of MP-I East and MP-I West allowing for a 250 lbs/day net increase in under a combined VOC emissions from either source limitation of 500 lbs/dayfor either MP-I East andWest without applying to GBUAPCD for a Rule 209-A permit, without installing BACT, and without purchasing emission offsets, Ormat has violated and continues to violate the Clean Air Act. This violation has been ongoing since at least February 8, 2010.

99.88. Ormat's violations of Rule 209-A are a violation of an emission standard or limitation, within the meaning of the Clean Air Act, and a violation of the Act's new source review performance standards. 42 U.S.C. §7411(e). The violations are ongoing, and will continue unless remedied by an order from the Court.

100.89. Ormat has violated Rule 209-A each and every day since February 8, 2010, and continues to violate Rule 209-A as set forth above. Each day that Ormat fails to comply with Rule 209-A is a separate violation of the Act. Each day that Ormat operates MP-I East and MP-I West without complying with Rule 209-A is a separate violation of the Act. Each violation and each day of violation constitutes a separate violation subject to penalties, injunctive and declaratory relief.

~~THIRD~~ SECOND CAUSE OF ACTION
Clean Air Act, 42 U.S.C. §7604(a) - Violation of Rule 209-B
(Proposing to Operate, and Operating, the MP-I Facility Without Required Permits, Including BACT)
Declaratory and Injunctive Relief, Civil Penalties
By All Plaintiffs Against All Defendants

101.90. All of the above paragraphs are incorporated herein by reference as if set forth

again in full.

~~102.~~91. Ormat has violated Rule 209-B by failing to apply for and failing to obtain PTOs from the Air District to operate the air pollutant emitting equipment at the MP-I East and West facilit~~ies~~y without first obtaining an ATC permit(s) pursuant to Rule 209-A. Rule 209-B.A.1.

~~103.~~92. On or around February 8, 2010, Ormat applied for and obtained PTOs Nos. 602-03-09 and 601-03-09 from GBUAPCD, which approved a combined VOC emissions limit for MP-I East and MP-I West of 500 lbs/day for either source. Ormat failed to comply with Rule 209-B because Ormat failed to ~~first apply for or obtain an ATC permit pursuant to Rule 209-A, and~~ failed to install BACT and obtain emissions offsets as required under Rule 209-A, before it applied for and receiving a PTO pursuant to Rule 209-B.

~~104.~~93. Prior to receiving a PTO and beginning to operate the MP-I facility, Ormat was required to comply with Rule 209-B, and Clean Air Act §173(a). 42 U.S.C. §7503(a). Because compliance with Rule 209-B is predicated on compliance with Rule 209-A, by failing to apply for and obtain an ATC permit in compliance with Rule 209-A, Ormat also failed to comply with Rule 209-B, and illegally obtained PTOs that fail to comply with Rule 209-B. This violation has been ongoing since at least February 8, 2010.

~~105.~~94. Ormat's violations of Rule 209-B are a violation of an emission standard or limitation within the meaning of the Clean Air Act~~, and a violation of the Act's new source review performance standards. 42 U.S.C. §7411(e)~~. The violations are ongoing, and will continue unless remedied by an order from the Court.

95. Ormat has violated Rule 209-B each and every day since February 8, 2010 through the present. Each day that Ormat fails to comply with Rule 209-B is a separate violation of the Act. Each day that Ormat operates MP-I without complying with Rule 209-B is a separate violation of the Act. Each violation and each day of violation constitutes a separate violation subject to penalties, injunctive and declaratory relief.

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~~106.~~

~~FOURTH~~ THIRD CAUSE OF ACTION
Clean Air Act, 42 U.S.C. §7604(a) - Violation of Rule 209-A
(Proposing to Operate, and Operating, the MP-II and PLES-I Facilities Without Required Permits, Including BACT)
Declaratory and Injunctive Relief, Civil Penalties
By All Plaintiffs Against All Defendants

~~107.~~96. All of the above paragraphs are incorporated herein by reference as if set forth again in full.

~~108.~~97. MP-II and PLES-I are owned and operated as a single stationary source within the meaning of Rule 209-A and the federal Clean Air Act, with approved VOC emissions limits above the Rule 209-A BACT threshold. Ormat was required to comply with Rule 209-A prior to operating and/or modifying MP-II and PLES-I.

~~109.~~98. Ormat has failed to comply with Rule 209-A by failing to apply for and obtain valid ~~a~~ Rule 209-A ATC permits to construct and operate MP-II and PLES-I under the combined emissions limit, and by failing to install BACT or obtain emissions offsets at either plant.

~~110.~~99. The Air District issued ATC 329 for MP-II in July 26, 1988, limiting VOC emissions from MP-II to 250 lbs/day. The Air District issued ATC 575 to allow construction of PLES-I in 1989, limiting emissions to 250 lbs/day of VOCs. On or around February 8, 2010, Ormat applied for and GBUAPCD issued PTOs Nos. 583-03-09 (MP-II) and 575-03-09 (PLES-I), approving a combined VOC emissions limit of 500 lbs/day, without requiring the plants to install BACT or obtain emissions offsets. ~~The combined emissions limit resulted in single source VOC emissions at double the 250 lbs/day Rule 209-A threshold.~~

100. Under Rule 209-A, a permit for a new or modified source must be denied if it results in an increase in emissions of 250 or more lbs/day of VOCs, unless BACT and emission offsets are required at the source. Rule 209-A.B.2.a. The permits issued on February 8, 2010 for the first time allowed either MP-II or PLES-I to release up to 500 lbs/day of VOCs – an

increase of 250 lbs/day over the prior permit limits. Because either MP-II or PLES-I could, operate at a net emissions increase of 250 lbs/day, BACT and offsetting requirements were triggered for both units under Rule 209-A.

~~111.~~

~~112.~~101. Ormat failed to obtain a Rule 209-A permits for MP-II and PLES-I's combined VOC emissions, ~~and as a result,~~ failed to implement BACT and failed to obtain emission offsets prior to commencing combined operations.

~~113.~~102. Ormat has violated the Clean Air Act and Rule 209-A by proposing to operate, and operating, MP-II and PLES-I without obtaining a permit under Rule 209-A. Ormat's operations have resulted, and threaten to further result in, a net emissions increase of air contaminants, including VOCs. This violation has been ongoing since approximately February 8, 2010.

~~114.~~103. Ormat's violations of Rule 209-A are a violation of an emission standard or limitation within the meaning of the Clean Air Act, ~~, and of the Act's new source review performance standards. 42 U.S.C. §7411(e).~~ The violations are ongoing, and will continue unless remedied by an order from the Court.

~~115.~~104. Each day that Ormat fails to comply with Rule 209-A is a separate violation of the Act. Each day that Ormat operates MP-II and PLES-I without complying with Rule 209-A is a separate violation of the Act. Each violation and each day of violation constitutes a separate violation subject to penalties, injunctive and declaratory relief.

~~FIFTH~~ FOURTH CAUSE OF ACTION
Clean Air Act, 42 U.S.C. §7604(a) - Violation of Rule 209-B
(Proposing to Operate, and Operating, the MP-II and PLES-I Facilities Without Permits Required By Law, Including BACT)
Declaratory and Injunctive Relief, Civil Penalties
By All Plaintiffs Against All Defendants

~~116.~~105. All of the above paragraphs are incorporated herein by reference as if set forth again in full.

~~117.~~106. Ormat has violated Rule 209-B by applying for and obtaining PTOs from the Air District to operate the air pollutant emitting equipment at the MP-II and PLES-I facilities without obtaining ~~an~~ valid ATC permit~~(s)~~ pursuant to Rule 209-A, ~~and without~~ implementing BACT, and ~~d without~~ obtaining emissions offsets. Rule 209-B.A.1.

~~118.~~107. On or around February 8, 2010, Ormat applied for and GBUAPCD issued PTOs Nos. 583-03-09 (MP-II) and 575-03-09 (PLES-I), which approved a combined emissions limit of 500 lbs/day total VOC emissions, and allowed either MP-II or PLES-I to emit up to 500 lbs/day of VOCs. Ormat failed to install BACT or obtain emissions offsets before it applied for and received the PTOs.

~~119.~~108. Prior to receiving a PTO and beginning to operate the MP-II and PLES-I facilities, Ormat was required to comply with Rule 209-B, and Clean Air Act §173(a). 42 U.S.C. §7503(a). Because compliance with Rule 209-B is predicated on compliance Rule 209-A, by failing to comply with Rule 209-A, Ormat also failed to comply with Rule 209-B, and illegally obtained PTOs that fail to comply with Rule 209-B. Ormat has failed to comply with these requirements since at least February 8, 2010.

~~120. Under Clean Air Act §7411(e), it is unlawful to operate MP-II and PLES-I in violation of new source review standards. Ormat has operated several pieces of equipment at the MP-II and PLES-I facilities without complying with the Clean Air Act's new source review standards. Accordingly, Ormat has violated the new source review performance standards established under the Clean Air Act §111(e), 42 U.S.C. §7411(e) Rule 209-B. Ormat's operations have resulted, and threaten to further result in, a net emissions increase of air contaminants, including VOCs. This violation has been ongoing each and every day since approximately February 8, 2010.~~

~~121.~~109. Ormat's violations of Rule 209-B are a violation of an emission standard or limitation within the meaning of the Clean Air Act~~, and of the Act's new source review performance standards. 42 U.S.C. §7411(e).~~. The violations are ongoing, and will continue unless remedied by an order from the Court.

110. Each day that Ormat fails to comply with Rule 209-B is a separate violation of the Act. Each day that Ormat operates MP-II and PLES-I without complying with Rule 209-B is a separate violation of the Act. Each violation and each day of violation constitutes a separate violation subject to penalties, injunctive and declaratory relief.

~~122.~~

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~~SIXTH~~ FIFTH CAUSE OF ACTION

~~**Clean Air Act, 42 U.S.C. §7604(a) - Violation of Rule 209-A (Proposing to Construct and Operate M-1 Without Complying with BACT and Emissions Offsets Requirements During Start-Up Operations) Declaratory and Injunctive Relief, Civil Penalties**~~

~~***By All Plaintiffs Against All Defendants***~~

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~~123. All of the above paragraphs are incorporated herein by reference as if set forth again in full.~~

~~124. Ormat has failed to comply with Rule 209-A by proposing to construct and operate the M-1 replacement plant simultaneously with the MP-I plant for up to two years, without obtaining a Rule 209-A permit and without installing BACT or obtaining emissions offsets at either facility.~~

~~125. MP-I's existing VOC emission limit is 500 lbs/day. M-1's projected VOC emission limit is 205 lbs/day. During the two-year start-up period, MP-I and M-1 will have a total, combined VOC emission limit of 705 lbs/day.~~

~~126. This is almost triple the Rule 209-A emission threshold of 250 lbs/day, triggering the need to obtain a Rule 209-A permit, including BACT and emissions offsets.~~

~~127. MP-I and M-1 will operate as a single stationary source within the meaning of Rule 209-A for up to two years once M-1 is online. By proposing to construct and operate the M-1 facility without complying with Rule 209-A during the two-year start-up period, Ormat has violated, and continues to violate, Rule 209-A and Clean Air Act §173(a), 42 U.S.C. §7503(a). This violation has been ongoing each and every day since at least July 1, 2011.~~

~~128. Ormat's violations of Rule 209-A are a violation of an emission standard or limitation within the meaning of the Clean Air Act, and of the Act's new source review~~

performance standards. 42 U.S.C. §7411(e). The violations are ongoing, and will continue unless remedied by an order from the Court.

129. Each day that Ormat fails to comply with Rule 209-A is a separate violation of the Act. Each day that Ormat proposes to construct, or constructs, M-1 without complying with Rule 209-A is a separate violation of the Act. Each violation and each day of violation constitutes a separate violation subject to penalties, injunctive and declaratory relief.

SEVENTH CAUSE OF ACTION
Clean Air Act, 42 U.S.C. §7604(a) – Violation of Rule 209-B
(Proposing to Construct and Operate M-1 for a Longer Start-Up Period Than Permitted By Law)
Declaratory and Injunctive Relief, Civil Penalties
By All Plaintiffs Against All Defendants

130. All of the above paragraphs are incorporated herein by reference as if set forth again in full.

131. Ormat has failed to comply with Rule 209-B by applying for and obtaining permits from the Air District and the County to construct and operate the M-1 replacement plant with a start-up period of more than ninety (90) days.

132. Rule 209-B allows a maximum of 90 days as a start-up period for simultaneous operation of an existing stationary source and a new stationary source or replacement. Rule 209-B, sect. A.3. Ormat was prohibited by Rule 209-B from applying for and obtaining an ATC and PTO for the M-1 facility that authorized a two-year start-up period, more than eight (8) times the maximum start-up period allowed by Rule 209-B.

133. As approved, the M-1 plant will allow a startup period of two (2) years, which is 730 days.

134. By proposing to obtain permits to construct and operate the M-1 facility with a longer start-up period than allowed by Rule 209-B, Ormat has violated, and continues to violate, Rule 209-B and Clean Air Act §173(a), 42 U.S.C. §7503(a). Additionally, Ormat proposes to construct and operate the M-1 plant without complying with the New Source Review standards contained in the Clean Air Act §173, 42 U.S.C. §7503 and Rule 209-B. This violation has been

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~~ongoing each and every day since at least July 1, 2011.~~

~~135. Ormat's violations of Rule 209-B are a violation of an emission standard or limitation within the meaning of the Clean Air Act, and of the Act's new source review performance standards. 42 U.S.C. §7411(e). The violations are ongoing, and will continue unless remedied by an order from the Court.~~

~~136. Each day that Ormat fails to comply with Rule 209-B is a separate violation of the Act. Each day that Ormat proposes to construct, or constructs, M-I without complying with Rule 209-B is a separate violation of the Act. Each violation and each day of violation constitutes a separate violation subject to penalties, injunctive and declaratory relief.~~

~~EIGHTH CAUSE OF ACTION~~

Clean Air Act, 42 U.S.C. §7604(a) - Violation of Rule 209-A
(Proposing to Operate, and Operating, the Ormat Complex Without the Permits Required by Law, Including BACT and Emission Offsets)
Declaratory and Injunctive Relief, Civil Penalties
By All Plaintiffs Against All Defendants

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~~137.~~111. All of the above paragraphs are incorporated herein by reference as if set forth again in full.

~~138.~~112. Ormat has failed to apply for or obtain an ATC permit pursuant to Rule 209-A, and has failed to install BACT or obtain emissions offsets for the Ormat Complex as a single stationary source, in violation of Rule 209-A.

~~139.~~113. Ormat owns and operates the four~~three~~ existing facilities – MP-I East, MP-I West, MP-II, and PLES-I – as a single source. The equipment at each of the individual geothermal plants is dependent upon and affects the processes of the other facilities' equipment; all four~~three~~ facilities rely on the same raw geothermal material and production wells, are located in adjacent properties, share common ownership, share a single control room, have connected pipelines, have the same contract limitations on collective power production, a single reclamation plan, and fall under the same industrial grouping – SIC Code 4911 (Electric Services), and NAICS Code 221119 (Other Electric Power Generation). Electricity generated at MP-II powers the production wells for MP-I.

~~140.~~114. These and other factors make the ~~three~~ four Ormat facilities a single stationary source within the meaning of Rule 209-A and the Clean Air Act.

~~141.~~115. The Ormat Complex has total permitted VOC emissions of 1,000 lbs/day, and will generate up to 1,205 lbs/day of VOC emissions during the M-1 start-up period. These emissions vastly exceed Rule 209-A's emissions threshold of 250 lbs/day by almost five-fold.

~~142.~~116. Ormat has violated the Act and Rule 209-A by constructing and operating the Ormat Complex without obtaining permits for this single stationary source in compliance with Rule 209-A, and without installing BACT or obtaining emission offsets. Ormat's operations have resulted, and threaten to further result, in a net emission increase of air contaminants, including VOCs, above levels allows by the Act. This violation has been ongoing each and every day since approximately January 1, 1989. Ormat is subject to penalties and injunctive relief for these~~is~~ violations each and every day since July 8, 2009.

~~143.~~117. Ormat's violations of Rule 209-A are a violation of an emission standard or limitation within the meaning of the Clean Air Act~~, and a violation of the Act's new source review performance standards. 42 U.S.C. §7411(e)~~. The violations are ongoing, and will continue unless remedied by an order from the Court.

118. Each day that Ormat fails to comply with Rule 209-A is a separate violation of the Act. Each day that Ormat operates the Ormat Complex plants without complying with Rule 209-A is a separate violation of the Act. Each violation and each day of violation constitutes a separate violation subject to penalties, injunctive and declaratory relief.

SIXTH CAUSE OF ACTION
Clean Air Act, 42 U.S.C. §7604(a) - Violation of Rule 209-A
(Proposing to Operate, and Operating MP-I, MP-II and PLES-I Without the Permits Required by Law, Including BACT and Emission Offsets)
Declaratory and Injunctive Relief, Civil Penalties
By All Plaintiffs Against All Defendants

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119. All of the above paragraphs are incorporated herein by reference as if set forth again in full.

120. Ormat has failed to comply with Rule 209-A Section D by failing to install

BACT or obtain emissions offsets for MP-I East~~Unit 100~~, MP-I West~~Unit 200~~, MP-II, PLES-I despite each unit alone resulting in a net increase of 250 lbs/day of VOCs.

121. MP-I East~~Unit 100~~, MP-I West~~II Unit 200~~, MP-II, and PLES-I, were each initially issued ATC permits authorizing emissions limits of 250 lbs/day thereby individually reaching the Rule 209-A threshold triggering BACT and offsetting requirements under Rule 209-A Section D. Subsequent permitting to combine emissions limits for MP-II units and MP-II with PLES-I have not brought emissions levels below the 250 lbs/day threshold, and has in fact allowed each unit to increase its emission rate by another 250 lbs/day.

122. Ormat has violated the Act and Rule 209-A by constructing and operating each unit in the Ormat Complex without installing BACT or obtaining emission offsets. Ormat's operations have resulted, and threaten to further result, in a net emission increase of air contaminants, including VOCs, above levels allows by the Act. Therefore, Ormat is operating a plant without a valid permit in violation of the Clean Air Act.

123. Ormat's violations of Rule 209-A are a violation of an emission standard or limitation within the meaning of the Clean Air Act. This violation has been ongoing each and every day since the units were constructed. Ormat is subject to penalties and injunctive relief for these violations each and every day since March 17, 2011. The violations will continue unless remedied by an order from the Court.

124. In addition, Ormat has received new permits for all four units since March 17, 2011. For example, in 2013 the Air District issued ATCs and PTOs 601-04-13 and 602-04-13 for MP-I East and MP-I West~~Units 100 and 200 respectively~~, 583-04-13 for MP-II and 575-04-13 for PLES-I. Ormat violated Rule 209-A each time it obtained a new ATC because it failed to certify or incorrectly certified that all other stationary source in the State owned by Ormat were in compliance with all applicable emission limitations and standards under the Clean Air Act, Rule 209-A.A.2. Because MP-I East, MP-I West, MP-II, and PLES-I all failed to implement BACT and offsets pursuant to 209-A.D, they were not and are not in compliance with the Clean Air Act. Thus, -Ormat violated Rule 209-A when it obtained subsequent ATCs while it owned

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units in the State not in compliance with Rule 209-A.

125. Each day that Ormat fails to comply with Rule 209-A is a separate violation of the Act. Each day that Ormat operates the Ormat Complex plants without complying with Rule 209-A is a separate violation of the Act. Each violation and each day of violation constitutes a separate violation subject to penalties, injunctive and declaratory relief.

SEVENTH CAUSE OF ACTION
Clean Air Act, 42 U.S.C. §7604(a) - Violation of Rule 209-B
(Proposing to Operate, and Operating, the MP-I, MP-II and PLES-I Facilities Without Permits Required By Law, Including BACT)
Declaratory and Injunctive Relief, Civil Penalties
By All Plaintiffs Against All Defendants

126. All of the above paragraphs are incorporated herein by reference as if set forth again in full.

127. Ormat has violated Rule 209-B by applying for and obtaining PTOs from the Air District to operate the air pollutant emitting equipment at the MP-I, MP-II and PLES-I facilities without obtaining an ATC permit(s) pursuant to Rule 209-A, and without implementing BACT and without obtaining emissions offsets. Rule 209-B.A.1.

128. In 2013, the Air District issued PTOs 601-04-13 and 602-04-13 for MP-I East and MP-I West ~~Units 100 and 200 respectively~~, 583-04-13 for MP-II, and 575-04-13 for PLES-I. Prior to receiving a PTO and beginning to operate the MP-II and PLES-I facilities, Ormat was required to comply with Rule 209-B, and Clean Air Act §173(a). 42 U.S.C. §7503(a). Because compliance with Rule 209-B is predicated on compliance Rule 209-A, by failing to comply with Rule 209-A and install BACT for each plant. Because either MP-I East or West could, therefore, operate at a net emissions increase of 250 lbs/day, BACT and offsetting requirements were triggered for both units under Rule 209-A.

129. Ormat's violations of Rule 209-B are a violation of an emission standard or limitation within the meaning of the Clean Air Act. The violations are ongoing, and will continue unless remedied by an order from the Court.

130. Each day that Ormat fails to comply with Rule 209-B is a separate violation of the Act. Each day that Ormat operates MP-II and PLES-I without complying with Rule 209-B is a separate violation of the Act. Each violation and each day of violation constitutes a separate violation subject to penalties, injunctive and declaratory relief.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

1. A declaration by this Court that Ormat has violated the Clean Air Act and the provisions of the California State Implementation Plan (SIP) known as Rule 209-A and Rule 209-B.

2. A preliminary and permanent injunction, including a temporary restraining order, to require Ormat to cease and desist from any further construction or operation of the Ormat Complex and M-1 unless and until it fully complies with Rule 209-A and 209-B.

3. A preliminary and permanent injunction requiring Ormat to install Best Available Control Technology on its plants known as ~~M-1,~~ MP-I East, MP-I West, MP-II, and PLES-I.

4. A preliminary and permanent injunction requiring Ormat to obtain emission offsets to offset emissions generated by the plants known as ~~M-1,~~ MP-I East, MP-I West, MP-II, and PLES-I.

5. An Order requiring the Defendants to pay civil penalties of $37,500 per day for each violation of Rule 209-A and 209-B pursuant to Clean Air Act §304(a), 42 U.S.C. §7604(a).

6. An award of $100,000 for beneficial mitigation projects to enhance the public health or environment in the community near the Ormat Complex, ~~M-1~~, and/or the GBV Air Basin pursuant to section 304(g) of the federal Clean Air Act. Such an award would mitigate, to some degree, the harm to Plaintiffs and their members living, working, and recreating near the Ormat Complex ~~and M-1~~ caused by Defendants' violations of the Clean Air Act. Plaintiffs respectfully request that the Court consult with the US EPA Administrator, or her designee, in selecting such projects.

7. An Order requiring Ormat to take other appropriate actions to remedy, mitigate, or offset the harm to public health and the environment caused by the violations of the Act and District Rules alleged above.

8. An award to Plaintiffs of its costs of litigation, including reasonable attorneys' and expert witness fees, as authorized by section 304(d) of the Clean Air Act, 42 U.S.C. §7604(d) and/or any other applicable provision(s) of state and/or federal law.

9. All such other relief as this Court deems appropriate.

Dated: May 12, 2016~~July 8, 2014~~

Respectfully Submitted,

LOZEAU|DRURY LLP

/s/ Richard T. Drury
Richard T. Drury
Counsel for Plaintiffs

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Exhibit A

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Exhibit B

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